THE FINANCIAL SERVICES COMMISSION OF ONTARIO

PENSION BULLETIN

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Ontario

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The Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 as amended, the Pension Benefits Act, R.S.O. 1990, c. P.8 as amended, R.R.O. 1990, Reg. 909 as amended, the terms of the pension plan and trust, if any, and the policies, procedures and practices of FSCO should be considered in determining specific legal requirements, and professional advice should be sought.

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GENERAL ANNOUNCEMENTS

Pension Division Staff Changes

Gino Marandola has been appointed to the position of Senior Manager, Operations, of the Pension Plans Branch for a one-year assignment.

Dina Taub, Rita Vassalo, Christa Matz, Diana Tom and Doug Malone have been added to the Pension Plans Branch staffing compliment on a contract basis to assist with the workload of the Operations Unit.

Peter Dunlop has been seconded to the Pension Policy Unit as a Senior Policy Analyst, effective January 2, 2003. John King Shan assumes Peter's role as Pension Officer for the duration of his assignment. Fatima Vieira has been seconded to FSCO's Legal Services Branch to work on automobile insurance issues.

Contacts for Plan Specific Enquiries

Contact Name	Title	Phone Number	Allocation Alpha Range
Jaan Pringi	Sr. Pension Officer	(416) 226-7826	
Gulnar Chandani	Pension Officer	(416) 226-7770	#'s–Associated
Penny McIlraith	Pension Officer	(416) 226-7822	Associates–Bulk
Stanley Chan	Pension Officer	(416) 226-7829	Bull–Cem
Larry Martello	Pension Officer	(416) 226-7821	Cen–Cz
Kathy Carmosino	Pension Officer	(416) 226-7823	I–King
Preethi Anthonypillai	Pension Officer	(416) 226-7812	Kinh–Mark
Gino Marandola	Sr. Pension Officer	(416) 226-7820	
Calvin Andrews	Pension Officer	(416) 226-7768	Gko–H
Mark Lucyk	Pension Officer	(416) 226-7833	D–Em
John Graham	Pension Officer	(416) 226-7774	Marl–Nes
Julina Lam	Pension Officer	(416) 226-7815	Net–Pep
Anna Vani	Pension Officer	(416) 226-7833	Peq–Rob
Rosemin Jiwa Jutha	Sr. Pension Officer	(416) 226-7816	
Chantal Laurin	(Bilingual) Pension Officer	(416) 226-7808	En–Gkn
John Khing Shan	(Bilingual) Pension Officer	(416) 590-7237	Roc–Sons
Hae-Jin Kim	Pension Officer	(416) 226-7876	Sont–The Drop
David Allan	Pension Officer	(416) 226-7803	The Droq–Unicorp
Robin Gray	Pension Officer	(416) 226-7855	Unicorp–Z

FSCO Pension Advisory Committees — Membership as at April 2003

Accounting and Assurance Advisory Committee

Besler, Jason
Eigl, Charlie **(Chair)**
French, Mike
Racanelli, Nick
Wade, Jack
Cassidy, Jim
Finn, Mary Ann
Koehli, Ron
Turner, Eric
Walker, Albert **(Vice-Chair)**

Actuarial Advisory Committee

Cohen, Lorne **(Vice-Chair)**
Figueiredo, Karen **(Chair)**
Hutchinson, Laurie
Morrison, Dan
Pitcher, Clare
Rosenblat, Rob
DiRisio, Wendy
Hart, David
Levy, Thomas
Peng, Peter
Robertson, Marcus

Investment Advisory Committee

Andrews, Doug
Grantier, Bruce
Mercier, Eileen
Pennal, Peter
Pond, Robin
Wirth, Alf **(Chair)**
Franks, Jim
Kyle, Claire
Mills, Daniel
Phelps, Tom **(Vice-Chair)**
Schaefer, Klaus

Legal Advisory Committee

Forgie, Jeremy
Healy, Priscilla
Nachshen, Gary **(Chair)**
Picard, Mary
Rowe, Kevin
Gold, Murray **(Vice-Chair)**
Lokan, Andrew
O'Reilly, Hugh
Rienzo, Doug
Whiston, Bethune

HEARINGS/COURT MATTERS

The information set out in the following publication is current to March 28, 2003.

Enforcement Matters

i. Club 300 Bowl (BC)

Charges were laid against the corporation and both directors and officers for failing to pay funds deducted from employees' pay into the pension plan, failing to pay the required employer's contributions into the pension plan, failing to file Annual Information Returns and Financial Statements for fiscal years 1995 to 1998 and failing to file a wind up report. The first appearance for the charges occurred on July 24, 2002. A judicial pre-trail was scheduled for February 26, 2003. At that time the judicial pre-trial was adjourned to April 3, 2003.

ii. Christopher Bain

Microcolor Dispersions Inc. ("Microcolor") failed to remit both employer and employee contributions to its pension plan in breach of the *Pension Benefits Act*. Both the Company and its then part owner/director Christopher Bain, were charged under the *Pension Benefits Act*. Bain was charged in his personal capacity with being a director who had acquiesced or permitted Microcolor to breach the Act. Both Bain and the company were convicted. A probation order was made against Bain requiring him to make restitution. He failed to comply with the order and was charged with breach of the probation order. The trial is scheduled for April 25, 2003.

iii. Microcolor Dispersion Inc.

Microcolor was charged and convicted of failing to remit both employer and employee contributions into its pension plan, in respect of a certain period, in breach of the *Pension Benefits Act*. The required contributions were not made and the company has been charged again in respect of a later period. A judicial pre-trial was scheduled for January 13, 2003. On that date a trial was scheduled for September 19, and 23, 2003.

iv. John Parker

John Parker is a director of Microcolor. He has been charged in his personal capacity with permitting or acquiescing in Microcolor's failure to remit the employer's and employees' contributions into the pension plan. A judicial pre-trial was scheduled for January 13, 2003. A trial is now scheduled for September 19 and 23, 2003.

v. Mimik Industries Inc.

Charges were laid against the employer, Mimik Industries Inc., and against an officer of the employer for failing to remit the required contributions to the pension plan. The charges are based on the employer's failure to pay the entire amount of arrears due under a probation order dated October 9, 1997 — approximately $31,500 is outstanding. A judicial pre-trial was scheduled for February 5, 2003. On that date the judicial pre-trial was adjourned to April 23, 2003.

vi. Exxon Mobil Chemical Canada Ltd.

Charges were laid for failing to file an Annual Information Return for 1999 and failing to pay the Annual Information Return filing fees for 1998 and 1999. The first appearance was on February 25, 2003, at Old City Hall. The trial is scheduled for April 25, 2003.

vii. Educator Supplies Ltd.

Charges were laid for failing to file an Annual Information Return for 1999, failing to file the Financial Statement for 1999 and failing to pay the Annual Information Return filing fees for 1997, 1998, 1999 and 2000. The first appearance was on February 25, 2003 at Old City Hall. The trial is scheduled for April 25, 2003.

viii. Matrix Logistics Services Ltd.

Charges laid for failing to file Financial Statements for 1998, 1999 and 2001, for failing to file the Annual Information Return for 2000 and for failing to pay the Annual Information Return filing fee for 2000. The first appearance was on March 18, 2003, at Old City Hall. At that time the matter was adjourned to April 28, 2003.

ix. Oetiker Ltd.

Charges laid for failing to file Financial Statements for 1998, 1999 and 2000, for failing to file Annual Information Returns for 1999, 2000 and 2001 and for failing to pay the Annual Information Return filing fees for 1999, 2000 and 2001. The first appearance was on March 18, 2003, at Old City Hall. At that time the matter was adjourned to April 28, 2003.

x. Ontario Pork Producers' Marketing Board

Charges laid for failing to file Financial Statements for 1999, 2000 and 2001. The first appearance was on March 18, 2003, at Old City Hall. At that time the matter was adjourned to May 5, 2003.

Court Matters

i. Monsanto Canada Inc.

On April 29 and 30, 2002, the Court of Appeal heard the appeal of the Divisional Court's decision brought by Monsanto Canada Inc., the Association of Canadian Pension Management, and National Trust Company. The issues are whether the Act compels a distribution of surplus on partial wind up and whether the doctrine of legitimate expectation applies. The Divisional Court had unanimously allowed the Superintendent's appeal of the Financial Services Tribunal's majority decision, which held that the Act does not compel a distribution of surplus on partial wind up and that the doctrine of legitimate expectation applied.

On November 22, 2002, the Court of Appeal unanimously dismissed the appeal, holding that subsection 70(6) of the PBA requires a distribution of surplus on partial wind up and that the doctrine of legitimate expectation does not apply. Monsanto and the Association of Canadian Pension Management have each filed an application for leave to appeal to the Supreme Court of Canada.

ii. Ontario Teachers' Pension Plan (Ms. Anne Stairs)

On May 24, 2002, the Divisional Court heard an appeal by Anne Stairs against the Financial Services Tribunal's decision that directed the Superintendent not to carry out a proposal to order the Teachers' Pension Plan Board (the "Board") to pay certain survivor benefits to Ms. Stairs, a former spouse of the plan member who died before reaching retirement age. The Tribunal held that a separation agreement awarding Ms. Stairs an interest in the plan member's pension benefits (including death benefits) could not be enforced under the Act, as death benefits were not property and the plan member's spouse at the time of his death was not a party to the separation agreement.

The Divisional Court released its decision on June 18, 2002. The appeal was allowed. The Court found that death benefits were property that could be assigned and that subsection 48(13) clearly gave Ms. Stairs an interest in the death benefits. The standard of review is reasonableness. However, the standard is correctness when the Tribunal interprets family law or the common law.

The parties returned to argue the amount of Ms. Stairs entitlement before the Divisional

Court on September 3, 2002. The Court released its decision on December 5, 2002, awarding Ms. Stairs 50% of the pre-1987 pension benefits and 50% of the post 1986 pension benefits up to the date of divorce.

On February 21, 2003, the Court ordered the Board to pay Ms. Stairs costs of $40,000.00 plus disbursements. The Board has filed a motion for leave to appeal the Divisional Court's decision on quantum to the Court of Appeal. Ms. Stairs has filed a motion for leave to cross appeal with the Court of Appeal.

Ontario

LEGISLATIVE CHANGES/REGULATORY POLICIES

Financial Services Commission of Ontario
Commission des services financiers de l'Ontario

SECTION:	Life Income Fund/Locked-In Retirement Account
INDEX NO.:	L050-659
TITLE:	2003 LIF Maximum Payment Amount Table
APPROVED BY:	Deputy Superintendent, Pensions
PUBLISHED:	FSCO web site (December 2002)
EFFECTIVE DATE:	January 1, 2003

Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 ("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8 ("PBA") or Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.

The attached table has been prepared by the Financial Services Commission of Ontario ("FSCO"). Additional copies of this table and copies of articles published by FSCO about the Ontario LIF are available on FSCO's web site at: www.fsco.gov.on.ca, or may be picked up in person at the reception desk, 4th Floor, 5160 Yonge Street, North York, Ontario.

Interest assumptions used in the table on page 8:

(1) 6.00%, which represents the greater of the CANSIM B14013 rate for November 2002 (5.55%) and 6.00% for the first 15 years, and

(2) 6.00% for the years remaining to the end of the year in which the LIF owner attains 90 years of age. (Assumption to age 90 is for the purpose of maximum payment calculation only. The balance of a LIF must be used to purchase a life annuity by the end of the year in which the LIF owner attains 80 years of age.)

Percentages shown must be prorated for the initial fiscal year if less than twelve months. Part of a month is treated as a full month.

2003 Maximum Annual Payment Amount Table for an Ontario Life Income Fund (LIF)

Age at January 1, 2003	New Age During 2003	Years to End of Year Age 90 is Attained	Maximum Payment as a Percentage of the LIF Balance as at January 1, 2003*
48	49	42	6.19655%
49	50	41	6.23197%
50	51	40	6.26996%
51	52	39	6.31073%
52	53	38	6.35454%
53	54	37	6.40164%
54	55	36	6.45234%
55	56	35	6.50697%
56	57	34	6.56589%
57	58	33	6.62952%
58	59	32	6.69833%
59	60	31	6.77285%
60	61	30	6.85367%
61	62	29	6.94147%
62	63	28	7.03703%
63	64	27	7.14124%
64	65	26	7.25513%
65	66	25	7.37988%
66	67	24	7.51689%
67	68	23	7.66778%
68	69	22	7.83449%
69	70	21	8.01930%
70	71	20	8.22496%
71	72	19	8.45480%
72	73	18	8.71288%
73	74	17	9.00423%
74	75	16	9.33511%
75	76	15	9.71347%
76	77	14	10.14952%
77	78	13	10.65661%
78	79	12	11.25255%
79	80	11	11.96160%

*The maximum annual payment percentage is calculated on the basis of a twelve-month fiscal year to December 31, 2003, using the interest assumptions on the previous page.

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SECTION:	Financial Statements
INDEX NO.:	F100-100
TITLE:	Requirement to File Pension Plan Financial Statements or Pension Fund Financial Statements — Regulation 909 ss. 76(1),76(2) and 76(8).
APPROVED BY:	Superintendent of Financial Services
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EFFECTIVE DATE:	March 1, 2003
REPLACES:	F100-150, F100-400

Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 ("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8 ("PBA") or Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.

Section 76 of the Regulation sets out requirements for pension plan financial statements and pension fund financial statements filed with the regulator. The primary purpose of section 76 is to require disclosure regarding the assets of the plan, how the assets are invested and how these investments are performing.

Subsection 76(1) of the Regulation requires the plan administrator to file financial statements for the pension plan or financial statements for the pension fund as at the plan's fiscal year end. Subsection 76(2) of the Regulation requires financial statements of both types to be audited if the plan has $3,000,000 or more in assets calculated at market value at the end of the fiscal year. Subsection 76(8) of the Regulation states that all financial statements and auditors' reports (if applicable) shall be prepared in accordance with the principles and standards set out in the Handbook of the Canadian Institute of Chartered Accountants (the CICA Handbook).

Pension plan financial statements are general purpose financial statements that provide information about both the assets and the liabilities of a pension plan. They are, therefore, suitable both for regulatory filing and distribution to plan members. Pension fund financial statements do not disclose benefit obligations, but they are suitable for regulatory filing because information about plan liabilities is available to the regulator in other documents filed with FSCO.

When pension fund financial statements are prepared for regulatory filing, a note to the financial statements should state the basis of accounting. As financial statements filed with FSCO may be inspected by individuals listed in subsection 29(1) of the PBA, the note should explain that the financial statements have been prepared for regulatory purposes only and are not general purpose financial statements. The note should also state that the financial state-

ments do not disclose the pension benefit obligation but, in all other respects, are prepared in accordance with generally accepted accounting principles. Additional information about pension fund financial statements for defined benefit pension plans is set out in the CICA Handbook as Auditing Guideline 12, "Auditor's Report on Pension Fund Financial Statements Filed with a Regulator."

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SECTION:	Administrator
INDEX NO.:	A300-805
TITLE:	Electronic Communications Between Plan Administrators and Plan Beneficiaries
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO web site (March 2003)
EFFECTIVE DATE:	March 14, 2003

Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 ("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8 ("PBA"), Regulation 909, R.R.O. 1990 ("Regulation") or Electronic Commerce Act, 2000, S.O. 2000, c. 17 ("ECA"), the FSCO Act, PBA, Regulation or ECA govern.

NOTE: For your convenience, the electronic version of this policy contains hyperlinks to the ECA and CAPSA Guideline #2 as they exist at March 14, 2003. Changes to the linked websites are not the responsibility of FSCO and may result in the failure of these hyperlinks or accessing a version of the document other than that which existed at March 14, 2003.

In February 2002, the Canadian Association of Pension Supervisory Authorities ("CAPSA") released *CAPSA Guideline #2, Electronic Communication in the Pension Industry*. CAPSA Guideline #2 is intended to help pension plan administrators, and members, former members and other beneficiaries (the "plan beneficiaries") apply the provisions of the respective electronic commerce legislation for each jurisdiction to communications required under pension benefits legislation. The electronic commerce legislation for Ontario is the *Electronic Commerce Act, 2000*, which came into force on October 16, 2000.

The Financial Services Commission of Ontario ("FSCO") takes the position that communications between pension plan administrators and plan beneficiaries required under the PBA may be provided electronically, if they comply with all of the relevant requirements under the PBA, ECA and CAPSA Guideline #2. A plan administrator may consider, for example, electronically providing documents such as the annual statement, the explanation of the pension plan provisions and prescribed notices to plan beneficiaries, so long as the documents and their distribution comply with the PBA, ECA and CAPSA Guideline #2. It should be noted that the electronic exchange of information is entirely voluntary on the part of both the administrator and the plan beneficiary. Particular attention should be paid to the consent provisions of the ECA and CAPSA Guideline #2. CAPSA Guideline #2 explains what plan beneficiary consent should entail. Consent, together with other requirements, must also be valid at the time that the communication is made.

CAPSA Guideline #2 does not apply to electronic communications between plan administrators and pension regulators, and it is not yet possible for FSCO to receive or ensure the integrity of documents in electronic formats. Consequently, any documents in respect of the pension plan or the pension fund required to be filed with or provided to FSCO, including any documents the Superintendent of Financial Services is required to make available under section 30 of the PBA, must continue to be provided to FSCO in the traditional hard copy format.

Frequently Asked Questions about Electronic Communications Between Plan Administrators and Plan Beneficiaries

Must a plan beneficiary receive documents electronically?

No. Plan beneficiaries will continue to receive documents in paper form unless they consent, or are deemed to consent as provided under CAPSA Guideline #2, to receiving the documents electronically. A plan beneficiary must designate an electronic medium, such as providing an email address, for receiving these documents electronically.

In deciding whether to receive documents electronically, a plan beneficiary should consider how to store and maintain these documents to ensure future access to the information. For example, if the plan member designates his/her office computer for receipt of documents, might access to and storage of these personal documents be restricted by the employer's policy on the use of computer resources or by changes in the employment relationship?

Must the administrator provide documents electronically?

No. There is no requirement under the PBA, ECA and CAPSA Guideline #2, to offer any documents electronically. If the administrator chooses to provide documents electronically, the administrator would determine which documents to offer in electronic format to plan beneficiaries.

Once a plan beneficiary has consented to receive documents electronically, can the beneficiary withdraw the consent?

Yes. A plan beneficiary may revoke a consent or a deemed consent at any time, by so advising the plan administrator either in writing or electronically.

Can the administrator rely on the provision of the document electronically as a valid delivery to the plan beneficiary?

Yes, provided the administrator has complied with requirements of the PBA, the ECA and CAPSA Guideline #2 in the creation and transmission of the electronic document. However, if the administrator has received a message that the electronic document is non-deliverable, or if the administrator is otherwise aware that the plan beneficiary cannot receive the document through the electronic means previously identified, the administrator would know that the recipient cannot retrieve and process the electronic document. Therefore, the requirements of the PBA, the ECA and CAPSA Guideline #2 would not have been fulfilled.

Must the administrator provide a paper copy of the document, in addition to an electronic copy, once the plan beneficiary has consented to electronic communication?

No. The administrator need not provide a paper copy of the document, so long as the consent of the plan beneficiary remains valid. However, the electronic communication must be able to be printed and retained by the plan beneficiary.

Where a plan beneficiary continues to have a right to receive pension documents following termination of employment or retirement, can these documents be requested electronically?

Yes, assuming the plan administrator offers to provide the documents electronically. To receive the documents electronically, the plan beneficiary must provide consent and designate an electronic medium for the receipt of documents.

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SECTION:	Locked-In Accounts
INDEX NO.:	L200-300
TITLE:	Life Income Funds (LIFs) — Regulation 909 Schedule 1
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO web site (March 2003)
EFFECTIVE DATE:	March 1, 2003
REPLACES:	L050-500, L050-501, L050-600, L050-603, L050-650, L050-700, L050-701, L050-702, L050-703

Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 ("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8 ("PBA") or Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.

This policy includes the following headings:

- **Introduction — The Ontario Life Income Fund**
- **Sale and Purchase of a LIF**
- **Sources of Funds for LIFs**
- **Requirements for Annual Payments**
- **General Provisions**
- **The Ontario LIF and LIFs Established in Other Jurisdictions**
- **Special Applications for Withdrawal of Money from a LIF: Shortened Life Expectancy, Small Amounts and Amounts the Exceed ITA Limits**
- **Frequently Asked Questions About the LIF**

Introduction — The Ontario Life Income Fund

Clause 42(1)(b) of the PBA provides that a former member of a pension plan who, on or after January 1, 1988, terminates employment or ceases to be a member of the pension plan and who is entitled to a deferred pension, is entitled to require the administrator to pay an amount equal to the commuted value of the deferred pension into a prescribed retirement savings arrangement (referred to in this policy as a "locked-in account"). This policy will provide an overview of the main features of one such locked-in account, the Life Income Fund ("LIF"). Most of the legislative requirements respecting LIFs can be found in Schedule 1 of the Regulation.

Prior to October 1992, where pension money had been transferred to a locked-in RRSP (now known as a locked-in retirement account or "LIRA"), individuals had to purchase a life annuity by the time the locked-in RRSP came to an end when the individual reached age 71 (now age 69) regardless of whether they needed retirement income at that time. Many individuals objected to being required to purchase an annuity, noting the low annuity rates then available, the absence of flexibility in retirement planning, and the loss of continuing investment growth of their retirement funds. The Ontario LIF, a more flexible arrangement for tax and income planning purposes, was introduced in October 1992 as a locked-in account that would provide an income payment vehicle for pension money that is subject to the PBA.

The LIF is intended to provide greater flexibility by enabling individuals to defer the annuity purchase while continuing to provide lifetime retirement income. While money is in the LIF, a certain amount must be paid out to the owner each year to provide a flow of retirement income within a specified range. Control over the balance of the locked-in investments rests with the owner, and all investment earnings continue to accrue on a tax-sheltered basis. Any assets in the LIF at the end of the year in which the owner reaches age 80 must be used to purchase a life annuity.

The Regulation provides that a LIF must qualify as a registered retirement income fund ("RRIF") under the *Income Tax Act* (Canada) ("ITA"). In essence, the LIF is a RRIF with additional requirements. The RRIF rules under the ITA set the minimum amount that must be paid out annually. Consistent with the principle that locked-in money must provide a lifetime retirement income, the Regulation sets the annual maximum payment for a LIF and requires the eventual purchase of a life annuity.

Sale and Purchase of a LIF

Who Can Sell a LIF?

The LIF may be sold by any financial institution as long as the LIF complies with the requirements of the ITA and the institution administers the amount transferred and all interest and investment gains as required by the PBA and Regulation. Retailers of LIFs can include insurance companies, banks, trust companies, credit unions, investment companies and individuals authorized to sell a RRIF. Ontario does not require financial institutions to submit their LIF contracts for approval, nor does the Financial Services Commission of Ontario ("FSCO") maintain a list of approved LIF contracts, as some Canadian jurisdictions do. FSCO does not register LIFs and will not review specimen LIF contracts for compliance with the applicable requirements.

Who Can Purchase a LIF?

Subject to the conditions for purchase noted below, a LIF may be purchased by:

- any former member of a pension plan who is entitled to a portability option as a result of termination of employment or plan membership, or as a result of a plan wind up where portability rights are granted;
- a spouse, same-sex partner or former spouse or former same-sex partner of a former member who is entitled to a portability option as a result of the former member's termination of employment or plan membership, or as a result of a plan wind up where portability rights are granted to the former member;
- a spouse, same-sex partner or former spouse or former same-sex partner of a former member who is entitled to a share of the former member's pension benefits under a court order or separation agreement due to a breakdown in their relationship (although the timing of the spouse's or same-sex partner's

access to income payments is dependent on the former member's entitlement date); or

- an individual who owns a LIRA, a locked-in retirement income fund ("LRIF") or another LIF.

It should be noted that Ontario members of pension plans regulated under the federal *Pension Benefits Standards Act, 1985* ("PBSA") who were in "included employment" as defined in the PBSA are generally not eligible to purchase the Ontario LIF.

Additional Conditions for a LIF

The earliest age that an individual can purchase a LIF is generally 55, but it could be earlier depending upon the age at which members may retire under the terms of the pension plan from which the money originated. Where money has been transferred from the pension plans of several employers, the earliest retirement date under any of the pension plans would apply. The determination of the earliest date on which the individual can purchase a LIF and begin receiving payments is a question of fact which must be determined by the individual and his or her advisors, based on the provisions of the former pension plan(s) and the individual's personal information. The latest age at which an individual can purchase a LIF is generally 79, although an individual could purchase a LIF during the year in which he or she reaches 80 and then purchase an annuity using the LIF assets at the end of that year.

When transfers are being made from a registered pension plan to a LIF, the financial institution should ensure that the plan administrator identifies the earliest date the plan member may retire, regardless of whether the pension is payable as a reduced pension. Where that information is not provided, the financial institution must satisfy itself that the plan allows for retirement before age 55 and that all conditions for receipt of the pension under that plan were satisfied by the individual before permitting LIF payments to commence prior to age 55.

If the individual who wishes to purchase a LIF has a spouse or same-sex partner on the day the LIF is purchased, the written consent of the spouse or same-sex partner is generally required before the LIF can be purchased. If the individual is living separate and apart from his or her spouse or same-sex partner on the date of the purchase, the consent of the spouse or same-sex partner is not required. If all the money that is to be used to purchase the LIF is derived from the pension benefits of the purchaser's former spouse or same-sex partner as a result of a marriage or relationship breakdown, the consent of the purchaser's current spouse or same-sex partner is also not required.

There is no form approved by the Superintendent of Financial Services ("Superintendent") for use as a spousal or same-sex partner consent. FSCO pension Form 3 (Waiver of Joint and Survivor Pension) is not appropriate and should not be used for consent to purchase a LIF or be modified to so provide. By consenting to the purchase of a LIF, a spouse or same-sex partner is not waiving his or her entitlement to survivor benefits.

The spouse or same-sex partner should be aware that there is no requirement that he or she provide such a consent; to do so is solely at his or her option. However, in those situations in which a consent is required, the LIF cannot be purchased unless the consent is given. Spouses or same-sex partners might want to withhold consent to the purchase of a LIF for any number of reasons. For example, annual payments from a LIF could potentially reduce the amount of any future survivor benefit or the amount to be divided upon the breakdown of the marriage or

relationship. Also, the more that is taken out of a LIF each year, the less that will be left in the LIF when an annuity is purchased, which could be detrimental to the spouse or same-sex partner. Because the LIF may be invested in the markets at the direction of the LIF owner and is not guaranteed, investment losses may occur and reduce the balance in the LIF.

Sources of Funds for LIFs

Primary Sources

A LIF can be purchased with money transferred from a registered pension plan or from a locked-in account (LIRA, LRIF or another LIF).

Commuted Annuities

(1) Annuities purchased prior to October 1992

If an individual is currently receiving payments from a life annuity that was purchased before Ontario LIFs were introduced (October 1992), the annuity may be commuted to purchase a LIF (or an LRIF) only if the issuer of the annuity contract agrees to do so. This may be done for a single or joint life annuity with or without a guarantee period. In the case of a joint life annuity, a spouse or same-sex partner who is in receipt of a lifetime survivor benefit may also commute the annuity to purchase a LIF if the former member satisfied the age requirement for a LIF purchase.

Issuers of annuities who agree to transfer funds to a LIF are obligated to identify the commuted value of the annuity, and the amount that will be available for the LIF purchase. The difference between the two amounts, if any, is the charge applied to effect the transfer.

(2) Annuities purchased after October 1992

Since Ontario LIFs were introduced in October 1992, clause 22(1)(c) of the Regulation has provided that the unexpired period of a guaranteed annuity purchased after that time may be commuted for the purpose of purchasing a LIF (or now an LRIF). The insurer cannot withhold agreement and must identify the commuted value of the annuity and the amount that will be available for the LIF (or LRIF) purchase. The difference between the two amounts, if any, is the charge applied to effect the transfer.

Requirements for Annual Payments

A certain amount must be paid out of a LIF each fiscal year, except in the initial year of the LIF. The LIF owner may choose not to withdraw any money in the first year but must begin receiving payments from the LIF before the end of the second year. The fiscal year of a LIF must end on December 31 and may not exceed twelve months. When a LIF is purchased at any time other than January 1, the first fiscal year begins at the time of the purchase and the annual payment for the first year, if any, must be prorated over the shortened year.

The LIF owner must notify the financial institution at the beginning of each fiscal year of how much he or she wishes to be paid and when payments are to be made (e.g., at the beginning or end of the fiscal year or on another basis that is allowed under the ITA). If the owner does not notify the financial institution of the amount to be paid, the minimum amount required under the ITA must be paid out to the LIF owner.

Minimum Payment Formula

The minimum amount that must be paid from the LIF each year is based on the minimum that must be paid from a RRIF, as prescribed under section 7308 of the federal Income Tax Regulations. Generally, the minimum is calculated by dividing the balance in the LIF at the beginning of the fiscal year by (90 minus the owner's age as of the beginning of the calendar year). If the LIF owner has a spouse or same-sex partner, that person's age may be used to

calculate the minimum in accordance with the ITA rules.

Maximum Payment Formula

To ensure that there is sufficient money in the LIF to purchase a life annuity by age 80, regular payments from the LIF are subject to a maximum annual limit determined using an actuarial formula. The maximum is calculated by dividing the balance in the LIF at the beginning of the fiscal year by the present value (at the beginning of the fiscal year) of an annuity of $1, payable annually in advance over the period from the beginning of the fiscal year until the end of the year in which the owner reaches ninety years of age. The owner cannot use his or her spouse's or same-sex partner's age in this calculation.

The Regulation also prescribes interest rate assumptions that apply for the purposes of this formula. For fiscal years which begin on or after January 1, 2001, the interest rate to be used in the formula for the first 15 years is the **greater of** 6% **or** the prescribed rate published for the previous November in the *Bank of Canada Review* under identification number CANSIM B-14013. For the sixteenth and each subsequent fiscal year, the interest rate is 6%.

These prescribed interest rates (CANSIM B-14013 and 6%) are **not** the maximum percentages that may be paid out of the LIF each year, but are simply the rates used in the formula to determine the maximum payment.

If the maximum amount for a fiscal year is less than the minimum amount prescribed under the ITA, the minimum amount must be paid out of the fund during the fiscal year.

Each year in December, FSCO publishes a policy which includes a table that sets out the maximum percentage that can be paid from a LIF in the upcoming fiscal year. Financial institutions can also determine this percentage themselves as soon as the November CANSIM B-14013 rate is published.

Note that the maximum annual limit on regular payments from the LIF does not apply to the special applications to withdraw money from a LIF described below. The maximum limit for a year does not change if money is withdrawn under one of these special applications.

Initial Year Maximum Payment

Where the money in a LIF was transferred from a registered pension plan, annuity or a LIRA (not from another LIF or LRIF), in the initial fiscal year of the LIF the maximum is calculated based on the amount transferred into the LIF and is prorated over the number of months remaining in the fiscal year of the LIF. The CANSIM rate for the previous November must be used in calculating the maximum amount payable in the initial fiscal year.

Note: Prior to March 3, 2000, Schedule 1 required that in the initial year of the LIF, where the transfer of money from a registered pension plan, annuity or LIRA occurred after January 1, the prescribed CANSIM rate for the month preceding the month in which the money was transferred would be used to determine the maximum payment amount for the initial year. For example, if the initial transfer was received during the month of May, the April CANSIM rate would be used to calculate the annual maximum payment amount for the initial eight-month fiscal year. However, Schedule 1 was revised in March 2000, and this requirement is no longer applicable.

Where the assets in a LIF have been transferred from another LIF or an LRIF, the maximum amount that can be paid from the new LIF in the new LIF's first fiscal year is zero.

General Provisions

No Commutation or Surrender

Money in a LIF cannot be commuted, withdrawn or surrendered in whole or in part except as permitted under the PBA or Regulation. This prohibition does not apply to prevent annual payments from a LIF or the following exceptions by which money in a LIF can be withdrawn by special application:

- small amounts (Schedule 1, s. 9);
- shortened life expectancy (Schedule 1, s. 10);
- excess contributions over the ITA limit (Regulation s. 22.2); and
- financial hardship (Regulation Part III).

Purchase of Annuity Required

If there are any assets remaining in the LIF on December 31 of the year in which the owner reaches age 80, those assets must be used to purchase an immediate life annuity for the owner. If the owner does not purchase such annuity by March 31 of the year after he or she reaches age 80, the financial institution is required to purchase it for the owner. If the owner has a spouse or same-sex partner and is not living separate and apart from the spouse or same-sex partner when the annuity is purchased, the annuity must provide a joint and survivor annuity where at least 60% of the annuity payment continues to the surviving spouse or same-sex partner. The owner and spouse or same-sex partner may waive the joint and survivor aspect of the annuity. As set out in section 22 of the Regulation, the annuity must be determined on a basis that does not take into account the sex of the annuitant. Should the annuity include pre-1988 benefits that were determined using sex-distinct rates, this portion of the annuity may be determined based on sex-distinct annuity rates.

Transfer Options

Before December 31 of the year in which the LIF owner reaches age 80, all or part of the assets in the LIF may be transferred to another LIF, an LRIF, a LIRA (if the owner has not turned 69) or to purchase an immediate life annuity, if allowed under the ITA.

Survivor Entitlements

If the LIF owner dies before a life annuity has been purchased, the owner's spouse or same-sex partner, or if there is none, a named beneficiary, or if there is none, the owner's estate, is entitled to receive a benefit equal to the balance in the LIF as of the date of death. The death benefit is not locked-in.

A spouse or same-sex partner living separate and apart from the LIF owner on the date of the owner's death is not entitled to a death benefit under the legislation, although the owner may designate that person as a beneficiary.

In the legislative changes introduced in March 2000, the spousal waiver right was deleted for the LIF. The spouse or same-sex partner of the LIF owner is no longer able to waive his or her right to survivor benefits.

Information that Must be Provided by the Financial Institution

Schedule 1 provides that a LIF contract must contain specific information, including: the name and address of the financial institution; the owner's powers, if any, respecting investment of the LIF assets; a statement that the owner agrees not to assign, charge, anticipate or give as security money payable under the LIF (except if required by a court order or domestic contract under the *Family Law Act*); and a description of the method for determining the value of the assets in the LIF.

In addition, at the beginning of each fiscal year, the following information must be provided to the owner: the sums deposited into the LIF; accumulated investment earnings (including any unrealized capital gains and losses); payments made out of the LIF; fees charged against it during the previous fiscal year; the value of the assets in the fund as of the beginning of the fiscal year; and the minimum and maximum amounts that may be paid out for the year. This information must also be provided to the owner when money is transferred from the LIF to a LIRA, LRIF, or another LIF, or to purchase an annuity, determined as of the date of the transfer. In addition, upon the death of the owner, this information must be provided to the beneficiary determined as of the date of the owner's death.

The Ontario LIF and LIFs Established in Other Jurisdictions

Money in an Ontario LIF may be transferred to a financial institution in another jurisdiction within Canada, as long as the transferee institution administers the LIF in accordance with Ontario's pension legislation. For example, a former plan member terminates employment in Ontario and purchases an Ontario LIF from a bank. Subsequently, he moves to British Columbia and wishes to use some or all of the money in the Ontario LIF to purchase a LIF in B.C. The bank in Ontario is not permitted to transfer the money unless the financial institution in B.C. administers the new LIF in accordance with Ontario law as an Ontario LIF. This is consistent with the treatment of LIRAs and LRIFs.

Since a LIF must qualify as a RRIF under the ITA, LIF funds cannot be transferred outside of Canada. In addition, Ontario would not be able to enforce legislated requirements restricting the use of locked-in money in LIFs if the funds were transferred outside of Canada.

Special Applications for Withdrawal of Money from a LIF: Shortened Life Expectancy, Small Amounts and Amounts that Exceed ITA Limits

General Provisions that Apply to all Special Applications

All special applications for withdrawals of money from a LIF due to shortened life expectancy, small amounts and amounts that exceed ITA limits must be made on a form approved by the Superintendent (Form 5) and signed by the LIF owner. If the owner has a spouse or same-sex partner on the date the application is signed, the spouse or same-sex partner must consent to the application subject to certain exceptions (see next paragraph) before the money can be withdrawn. The spouse or same-sex partner is not obligated to consent to the application, but if the spouse or same-sex partner agrees to consent, he or she must complete Part 4 of Form 5 in the presence of a witness (someone other than the LIF owner).

The consent of a spouse or same-sex partner is not required if the LIF owner and spouse or same-sex partner are living separate and apart at the time the application is signed. Consent of a spouse or same-sex partner is not required if the money in the LIF resulted from the pension benefit of the owner's former spouse or same-sex partner as a result of a breakdown in their relationship.

The completed application must be submitted to the financial institution which administers the LIF within 60 days after the date on which it was signed by the owner and, if applicable, the spouse or same-sex partner. Whether the application meets the requirements for withdrawal is determined by the financial institu-

tion. If the applicant qualifies for the withdrawal, the financial institution must pay the money within 30 days after it receives the completed application.

Applications for Withdrawal of Money from a LIF for Shortened Life Expectancy

In addition to the aforementioned general provisions for special applications, the following provisions apply to "Shortened Life Expectancy" applications.

Applications under the Terms of the Former Pension Plan

Before March 3, 2000, LIF owners whose life expectancy was shortened considerably by reason of mental or physical disability were not allowed to avail themselves of the shortened life expectancy provisions of the PBA. The legislative changes which came into effect on March 3, 2000 provided relief to LIF owners whose life expectancy is shortened. If the pension plan from which the money in the LIF originated contains a provision allowing for the variation of payment due to shortened life expectancy, the LIF owner can seek to withdraw money from the LIF under those terms. The LIF owner is responsible for satisfying the financial institution administering the LIF that his or her former plan contained such a provision and that, based on medical evidence and the terms of the pension plan, the owner's life expectancy has been considerably shortened. This is a question of fact. It is up to the financial institution to determine the format by which the application should be made.

Form 5 should not be used where the owner is applying under the terms of the plan.

Applications under Section 10 of Schedule 1

Effective March 3, 2000, Schedule 1 was amended to provide for shortened life expectancy withdrawals for all LIF owners, regardless of whether or not their former pension plan contained a shortened life expectancy provision. Any LIF owner may now apply to the financial institution to withdraw some or all of the money in the account if he or she is suffering from an illness or physical disability that is likely to shorten his or her life expectancy to less than two years.

The application must be made on Form 5 and be accompanied by a spousal or same-sex partner consent, if applicable, and a statement signed by a physician who is licensed to practice medicine in Canada that, in his or her opinion, the owner has an illness or physical disability that is likely to shorten his or her life expectancy to less than two years. The physician may either fill in Part 5 of Form 5, or provide his or her opinion as to the owner's life expectancy in another written and signed format, such as a letter. If the physician does not fill in Part 5, the letter must include a statement that the physician is licensed to practice medicine in a jurisdiction in Canada.

If the pension plan from which the money in the LIF originated contained a variation of payment provision for shortened life expectancy, the LIF owner has the choice of applying under the terms of section 10, Schedule 1 (and should use Form 5) **or** applying under the terms of the plan provisions (in which case, Form 5 should not be used). An example of a situation where the individual may wish to apply under the plan provisions would be where the plan provided a more generous shortened life expectancy criteria (e.g., a life expectancy of less than five years).

A LIF owner can only apply for a shortened life expectancy withdrawal under the rules described above if his or her LIF is governed by the laws of Ontario. If the LIF is governed by the laws of another province or the federal government, Ontario's shortened life expectancy provisions are not applicable. If the owner is not sure which laws govern their LIF, he or she should contact the administrator of the pension plan from which the LIF originated or the financial institution administering the LIF.

Applications for Withdrawal of Money from a LIF of a Specified Amount at Age 55 or Over ("Small Amounts")

In addition to the aforementioned general provisions for special applications, the following provisions apply to "Small Amounts" applications.

The locking-in rules present a problem when the amount in a LIF is so small that it would not be worthwhile for the owner to purchase a life annuity by age 80.

Effective March 3, 2000, the owner of a LIF may apply to withdraw **all** of the money in the LIF if:

- The owner is at least 55 years old when he or she applies; and
- The value of all assets held in all of the owner's Ontario LIRAs, LIFs and LRIFs is less than 40% of the Year's Maximum Pensionable Earnings ("YMPE") for the calendar year in which the application is made. (For the year 2003, this amount is 40% of $39,900 [the YMPE for 2003] = $15,960.)

The value of the assets held in each Ontario LIRA, LIF and LRIF must be based on the most recent statement given to the owner by the financial institution, and the statement must not be dated more than one year before the date the application is signed.

LIF owners can only apply for the small amount withdrawal under the rules described above if their LIF is governed by the laws of Ontario. If the LIF is governed by the laws of another province or the federal government, these rules do not apply. If the owner is not sure which laws govern their LIF, he or she should contact the administrator of the pension plan from which the LIF originated or the financial institution administering the LIF.

Applications for Withdrawal of Money from a LIF for Amounts that Exceed ITA Limits

In addition to the aforementioned general provisions for special applications, the following provisions apply to "Amounts that Exceed the ITA Limits" applications.

The ITA imposes a limit on the amount that a former pension plan member may transfer from a registered pension plan to a locked-in account (LIRA, LIF or LRIF) on a tax-sheltered basis when a former member terminates employment or membership in the plan. Amounts that do not exceed the ITA limit can only be transferred to a locked-in account. If the amount of the commuted value of an individual's deferred pension that is to be transferred from a pension plan to a locked-in account is greater than the amount allowed under the ITA for such a transfer, the administrator of the former member's pension plan must pay the excess amount to the individual in a lump sum.

However, if an amount that exceeds the ITA limit has already been transferred to a LIF, the owner may apply to the financial institution to withdraw the excess amount. It is up to the financial institution that administers the LIF to calculate the aggregate amount to be withdrawn.

The application must be made on Form 5 and must include a written statement from either the administrator of the owner's former pension plan or the Canada Customs and Revenue Agency ("CCRA") that sets out the excess amount that was transferred into the LIF. The consent of a spouse or same-sex partner is not necessary.

LIF owners can only apply for the withdrawal of amounts that exceed the ITA limit under the rules described above if their LIF is governed by the laws of Ontario. If the LIF is governed by the laws of another province or the federal government, these rules do not apply. If the owner is not sure which laws govern their LIF, he or she should contact the administrator of the pension plan from which the LIF originated or the financial institution administering the LIF.

Applications for Withdrawal of Money from a LIF for Financial Hardship

Effective May 1, 2000, individuals who qualify under certain prescribed circumstances of financial hardship may apply to the Superintendent of Financial Services for access to the money in their LIF. The rules and requirements for making such applications will be set out in a future policy.

Frequently Asked Questions About the LIF

How is the transfer of the commuted value from a pension plan to a LIF provided for under the ITA?

For the purposes of the ITA, an Ontario LIF is actually a RRIF with some additional conditions. These additional conditions make the LIF an acceptable vehicle to receive locked-in funds under Ontario law. The ITA provides for a transfer from a defined contribution plan (clause 147.3(1)(c)(iii)) and from a defined benefit plan (clause 147.3(4)(d)(iii)) to a RRIF.

Is specific wording required to allow a transfer to a LIF?

Yes. For a pension plan document to provide for a transfer that is acceptable to both the federal and provincial regulators, the transfer provision must contain references to both the RRIF and the LIF. For Ontario's purposes, a portability option which permits a transfer to "a RRIF which meets the requirements for a LIF as set out in the Regulation under the *Pension Benefits Act*, as amended from time to time" will be acceptable. Information on wording acceptable under the ITA should be sought from CCRA.

In addition, the RRIF document, a specimen of which is required to be on file with the CCRA, must comply with both the contractual requirements under the ITA for a RRIF and under the Regulation for a LIF.

How is money in the LIF taxed?

Under the ITA, all investment earnings on the money in the LIF accrue on a tax-deferred basis. LIF payments and withdrawals are considered to be taxable income for the year in which payment or withdrawal was made. Further inquires should be directed to the CCRA.

Are there any restrictions on how a LIF may be structured? Can a LIF be self-directed?

A LIF can be structured in any manner as long as it satisfies the requirements in the ITA for a RRIF and the requirements in the Regulation for a LIF. This would include a self-directed LIF.

Are there any investment restrictions that the LIF must comply with?

The only investment rules that a LIF must comply with are those under the ITA for a RRIF.

What is meant by "direct" and "indirect" transfers to a LIF?

Direct transfers refer to those from a registered pension plan, while indirect transfers refer to transfers from another locked-in account (LIRA, LIF or LRIF).

When a LIF is transferred from one financial institution to another, is the spouse's or same-sex partner's consent required?

No. Consent is only required when the LIF is first purchased and when certain withdrawals are made.

When an annuity is commuted for the purchase of a LIF, must the spouse or same-sex partner consent?

While there is no requirement for a spouse or same-sex partner to consent to the commutation of the annuity for the purpose of purchasing a LIF, the spouse or same-sex partner must consent to the actual purchase of the LIF. Therefore, if the money which is commuted is used for the first purchase of a LIF, the consent of the spouse or same-sex partner is required for the LIF purchase.

What rights does a spouse or same-sex partner have when a marriage or relationship ends?

A former spouse or same-sex partner is entitled to make a claim against assets in a LIF as part of the division of marital property in the event of a breakdown in the marriage or relationship. However, that entitlement is effective only when a court order or domestic contract under the *Family Law Act* is provided to the financial institution administering the LIF. In addition, assets transferred to the former spouse or same-sex partner due to the breakdown must continue to be locked-in.

Where the minimum payment is greater than the maximum payment, which amount should be paid?

Subsection 6(6) of Schedule 1 provides that the minimum amount must always be paid out of a LIF each year, regardless of what the maximum may be.

Can a LIF owner withdraw the minimum amount and transfer the difference between the minimum and maximum to a RRIF?

Yes, but if the owner does so, his or her withdrawal for that year for the purpose of the LIF will be the maximum amount.

What happens when assets in a LIF are transferred to another LIF before any money is paid out to the owner?

In this situation, the maximum amount that can be paid from the new LIF is zero. However, the ITA requires that the minimum amount be paid out from the old LIF before the transfer is made.

Is the yearly maximum increased if money is transferred from a LIRA to a LIF during a year?

No. Schedule 1 provides that the maximum amount for the fiscal year will be calculated based on the value of the assets of the plan at the start of that fiscal year.

Where the assets in a LIF are invested in five-year GICs that will only deposit any earned interest at the end of the five year period, should accrued interest be included in determining the value of the LIF at the start of each year?

Yes. The value of the assets at the start of a year includes any interest accrued to that date, even if the interest has not yet been paid and even if the interest would be forfeited if the GIC were subsequently cashed in before maturity.

When can a LIF be converted into a life annuity? Can this be done before the owner is 80?

The key determinant is when payments to the owner begin. Annuity payments may not begin until the individual is entitled to receive a pension benefit, which is generally 55 or an earlier age depending on the terms of the pension plan. The LIF owner may purchase a life annuity at any time but payments under it may not begin before he or she would have been entitled to receive payment of a pension benefit under the pension plan.

On death of the LIF owner, can the surviving spouse or same-sex partner "step into his or her shoes" and continue the LIF in the spouse's or same-sex partner's name?

No. Death breaks the locking-in of LIF funds, so the survivor spouse or same-sex partner is entitled to transfer the money in the LIF to an unlocked RRIF. The financial institution administering the LIF should not allow the survivor spouse or same-sex partner to become the successor annuitant to the owner's LIF, even though this is permitted under the ITA for a RRIF.

Can a LIF owner contribute non-locked-in money to their LIF?

No. The LIF is intended to be a vehicle for money that originated from a registered pension plan. Individuals are not allowed to combine locked-in funds with non-locked-in money.

Can the owner of an Ontario LIF combine it with a LIF governed by the laws of the federal government or another province?

No. The laws of each jurisdiction govern each LIF separately and LIFs governed by different jurisdictions may not be commingled.

SUPERINTENDENT OF FINANCIAL SERVICES

Administrator Appointments — Section 71 of the PBA

1. London Life as the Administrator of the Employee Retirement Plan of Cobra Machine Tool Company Inc. (Registration No. 1018183), effective immediately.

   DATED at Toronto, Ontario, this 6th day of March, 2003.

2. Mackenzie Financial as the Administrator of the Employees Pension Plan of Alderbrook Industries Limited (Registration No. 0574764), effective immediately.

   DATED at Toronto, Ontario, this 6th day of March, 2003.

3. PricewaterhouseCoopers as the Administrator of ABC Rail Limited Pension Plan (Registration No. 104197), effective immediately.

   DATED at Toronto, Ontario, this 7th day of February, 2003.

4. PricewaterhouseCoopers as the Administrator of the Pension Plan for Employees of Sealcraft Inc. (Registration No. 995522), effective immediately.

   DATED at Toronto, Ontario, this 23rd day of December, 2002.

5. Allan Smart Services as the Administrator of the Pension Plan for Employees of Thomson Kernaghan & Co Ltd. (Registration No. 0310151), effective immediately.

   DATED at Toronto, Ontario, this 9th day of December, 2002.

6. Morneau Sobeco as the Administrator of TCT Logistics Inc — Livingston Group Inc. Non-Contributory Plan for Hourly Employees (Registration No. 492363), effective immediately.

   DATED at Toronto, Ontario, this 9th day of December, 2002.

Notices of Proposal to Make an Order

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "PBA");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the PBA relating to the **Employee Retirement Plan for the Employees of Piccione Machine Tool & Gear Mfg., Registration Number 582080 (the "Plan");**

TO: **London Life Insurance Company**
Group Retirement Services
255 Dufferin Avenue
London ON N6A 4K1

Attention: Ms. Darlene Sundercock
Administrator

AND TO: **Piccione Machine Tool & Gear Mfg.**
32 Upton Road
Scarborough ON M1L 2B8

Attention: Ms. Lynda Piccione
Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Plan under section 69(1) of the PBA.

PROPOSED ORDER:

That the Employee Retirement Plan for the Employees of Piccione Machine Tool & Gear Mfg., Registration Number 582080, be wound up in whole effective May 31, 2001.

REASONS:

1. There was a failure of the employer to make contributions to the pension fund as required by the Act or the regulations, pursuant to clause 69(1)(b) of the PBA.
2. All or significant portion of the business carried on by the employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the PBA.
3. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the PBA. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, this 24th day of October, 2002.

K. David Gordon
Deputy Superintendent, Pensions
By Delegated Authority

[1]NOTE — PURSUANT to section 112 of the PBA any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "PBA");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the PBA relating to the **Pension Plan for the Hourly Employees of Magnatek Polygon Transformer Co., a division of Magnatek National Electric Coil Limited, Registration Number 996942 (the "Plan");**

TO: **Aon Consulting**
Suite 500
145 Wellington Street West
Toronto ON M5J 1H8

Attention: Mr. Brad Duce
Administrator

AND TO: **National Electric Coil (Polygon Transformer)**
50 Northline Road
North York ON M4B 3E2

Attention: Mr. Jim Gray
General Manager
Employer

AND TO: **Canadian Union of Operating Engineers & General Workers**
2087 Dundas Street East, Unit 103
Mississauga ON L4X 2V7

Attention: Mr. Grgar Zoran
Union Representative
Canadian Union of Operating Engineers & General Workers

AND TO: **Doane Raymond Limited**
P.O. Box 55
Royal Bank Plaza, Suite 1100,
North Tower
Toronto ON M5J 2P9

Attention: Mr. Ray Godbold
Trustee in Bankruptcy of Polygon Transformer Inc.

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Plan under section 69(1) of the PBA.

PROPOSED ORDER:

That the Pension Plan for the Hourly Employees of Magnatek Polygon Transformer Co., a division of Magnatek National Electric Coil Limited, Registration Number 996942, be wound up in whole effective December 31, 1993.

REASONS:

1. There was a cessation or suspension of employer contributions to the pension fund, pursuant to clause 69(1)(a) of the PBA.
2. There was a failure of the employer to make contributions to the pension fund as required by the Act or the regulations, pursuant to clause 69(1)(b) of the PBA.
3. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the PBA. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

[1]NOTE — PURSUANT to section 112 of the PBA any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, this 12th day of November, 2002.

K. David Gordon

Deputy Superintendent, Pensions

By Delegated Authority

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Maple Leaf Foods Inc. Employees Retirement Plan 100, Registration No. 0303180;**

TO: **Maple Leaf Foods Inc.**
150 Bartor Road
Weston ON M9M 1H1

Attention: Joyce Stephenson
Director, Pensions

Applicant and Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the Act, consenting to the payment out of the Maple Leaf Foods Inc. Employees Retirement Plan 100, Registration No. 0303180 (the Plan), to Maple Leaf Foods Inc. in the amount of $29,024,817 as at December 31, 2001, adjusted for actual expenses plus investment earnings or losses thereon to the date of payment.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all benefits and benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Sharing Agreement defined in paragraph 5 below) among members, former members and any other persons entitled to such payments have been paid, purchased, or otherwise provided for and satisfies me that all requirements of the *Quebec Supplemental Pension Plan Act* R.S.Q. 1990, R-15.1, as amended, have been met.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Maple Leaf Foods Inc. is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective December 31, 2001.
3. As at December 31, 2001, the surplus in the Plan was estimated at $57,772,394.
4. There is a judgement of the Ontario Superior Court of Justice dated June 15, 2001, that the Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer, and 100% of the active members and other members (as defined in the application) and 76.99% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:
   a) 55% to the Employer; and
   b) 45% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the Act, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 55% of the surplus in the Plan (after adding investment earnings and deducting expenses related to the wind up of the Plan).
7. The application appears to comply with section 78 and subsection 79(3)(a) & (b) of the Act and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the Tribunal), pursuant to subsection 89(6) of the Act if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

YOUR WRITTEN NOTICE requiring a hearing must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 15th day of November, 2002.

K. David Gordon
Deputy Superintendent, Pensions

Copy: Randy Bauslaugh, Blake,Cassels & Graydon LLP
Michael Millns, Towers Perrin
John Evans, Evans Law Firm
Paul Fox, Fox, Clarke, Dollak
Davis Brown, Eckler Partners Ltd.

[1]NOTE – PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28, respecting the **Pension Plan for Employees of United Tire & Rubber Co. Limited represented by United Steel Workers of America, Local 3950, Registration Number 0424671 (the "Pension Plan");**

TO: **PricewaterhouseCoopers Inc.**
P.O. Box 82, Royal Trust Tower
Toronto-Dominion Centre
Toronto ON M5K 1G8

Attention: Paul Macphail
Senior Vice-President

Administrator of the Pension Plan for Employees of United Tire & Rubber Co. Limited represented by United Steel Workers of America, Local 3950

AND TO: **United Tire & Rubber Co. Limited**
275 Belfield Road
Rexdale ON M9W 5C6

Attention: Raymond J. Fernandes
Chief Financial Officer

Employer

AND TO: **Ernst & Young Inc.**
Ernst & Young Tower
P.O. Box 251, 222 Bay Street
Toronto-Dominion Centre
Toronto ON M5K 1J7

Attention: Rick Kanabar
Manager

Receiver and Manager for United Tire & Rubber Co. Limited

AND TO: **Schonfeld Inc.**
Suite 2400, 390 Bay Street
Toronto ON M5H 2Y2

Attention: Harlan Schonfeld

Trustee in Bankruptcy for United Tire & Rubber Co. Limited

AND TO: **United Steelworkers of America, Local 3950**
c/o 25 Cecil Street
Toronto ON M5T 1N1

Attention: Jeff Richardson

National Representative

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO MAKE AN ORDER that the Pension Plan for Employees of United Tire & Rubber Co. Limited represented by United Steelworkers of America, Local 3950, Registration No. 0424671, be wound up in full effective March 14, 2000.

I propose to make this order pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act").

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. There was a cessation or suspension or employer contributions to the pension fund.
2. The employer failed to make contributions to the pension fund as required by the Act or the regulations.

3. The employer is bankrupt within the meaning of the *Bankruptcy Act* (Canada)
4. A significant number of members of the Pension Plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.
5. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

ANY NOTICE requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL, IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 15th day of November, 2002.

K. David Gordon
Deputy Superintendent, Pensions

[1]NOTE — PURSUANT to section 112 of the *Act* any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28, respecting the **Pension Plan for Wylie Press a division of The Johnstone Group Inc., Registration Number 0324335 (the "Pension Plan");**

TO: **The Manufacturers Life Insurance Company**
500 King North
P.O. Box 1602
Waterloo ON N2J 4C6

Attention: Karen Osborne
Plan Design Specialist

Administrator of the PensionPlan for Wylie Press a division of The Johnstone Group Inc.

AND TO: **Wylie Press a division of The Johnstone Group Inc.**
111 Ferrier Street
Markham ON L3R 3K6

Attention: Dianna Cooke
Comptroller

Employer

AND TO: **Shiner Kideckel Zweig Inc.**
10 West Pearce Street
Suite 4
Richmond Hill ON L4B 1B6

Attention: Joel Kideckel

Trustee in Bankruptcy for Wylie Press a division of The Johnstone Group Inc.

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO MAKE AN ORDER that the Pension Plan for Wylie Press a division of The Johnstone Group Inc., Registration No. 0324335, be wound up in full effective January 31, 2000.

I propose to make this order pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act").

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer failed to make contributions to the pension fund as required by the Act or the regulations.
3. The employer is bankrupt within the meaning of the *Bankruptcy Act* (Canada).
4. A significant number of members of the Pension Plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.
5. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

ANY NOTICE requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL, IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 2nd day of December, 2002.

K. David Gordon
Deputy Superintendent, Pensions

[1]NOTE – PURSUANT to section 112 of the *Act* any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28, respecting the **Pension Plan for the Employees of C & C International Yachts Limited, Registration Number 0687632 (the "Pension Plan");**

TO: **The Manufacturers Life Insurance Company**
500 King North
P.O. Box 1602
Waterloo ON N2J 4C6

Attention: Yolanda Pingos
Plan Design Associate

Administrator of the Pension Plan for the Employees of C & C International Yachts Limited

AND TO: **C & C International Yachts Limited**
P.O. Box 970
526 Regent Street
Niagara On The Lake ON L0S 1J0

Attention: Ruth Lamarre
Finance Administrator

Employer

AND TO: **Crawford Smith and Swallow**
531 Lake Street
St. Catherines ON L2N 4H6

Attention: James A. Cringan

Receiver for C & C International Yachts Limited

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO MAKE AN ORDER that the Pension Plan for the Employees of C & C International Yachts Limited, Registration No. 0687632, be wound up in full effective March 1, 1997.

I propose to make this order pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act").

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer failed to make contributions to the pension fund as required by the Act or the regulations.
3. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
4. A significant number of members of the pension plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.
5. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you , you deliver to the Tribunal a written notice that you require a hearing.[1]

ANY NOTICE requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL, IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 5th day of December, 2002.

K. David Gordon
Deputy Superintendent, Pensions

[1]NOTE — PURSUANT to section 112 of the *Act* any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(4) of the Act consenting to a payment out of the **BASF Pension Plan for Canadian Management Represented Employees, Registration No. 556613;**

TO: **BASF Canada**
345 Carlingview Drive
Toronto ON M9W 6N9

Attention: Mr. Peter Sinclair

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER under s. 78(4) of the Act, consenting to the payment out of the BASF Pension Plan for Canadian Management Represented Employees, Registration No. 556613 (the "Plan"), to BASF Canada in the amount of $219,018.62 as at September 30, 2001 plus interest, at the fund rate thereon, to the date of payment.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. BASF Canada is the employer as defined in the Plan (the "Employer").
2. As a result of a sale March 2, 2001, BASF sold Knoll Pharma Inc. to Abbott Laboratories. All Knoll employees stopped accruing benefits in the Plan on this date and commenced to accrue benefits under a similar plan established by Abbott. As a result of miscommunication in the new employer's organization, contributions on behalf of these Knoll employees continued to be made directly to the BASF Pension Plan for Canadian Management Represented Employees until September 2001.
3. Evidence of the overpayment to the fund has been submitted to the Financial Services Commission of Ontario.
4. There were no member submissions made about the repayment.
5. The application appears to comply with section 78(4) of the Act.
6. Such further and other reasons as come to my attention.

In accordance with subsection 105.(1) of the Act, an extension of the time limit under subsection 78(4) has been given.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

YOUR WRITTEN NOTICE requiring a hearing must be delivered to:

Financial Services Tribunal
14th Floor, 5160 Yonge Street
North York ON M2N 6L9

Attn: The Registrar

[1]NOTE -- PURSUANT to section 112 of the *Act* any notice, order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 10th day of December, 2002.

K. David Gordon
Deputy Superintendent, Pension Division

Copy: Ms. Ofelia Isabel, Towers Perrin

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "PBA");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the PBA relating to the **Pension Plan for OSF Inc., Registration Number 594366;**

TO: **The Manufacturers Life Insurance Company**
Canadian Pension Operations
500 King North, P.O. Box 1602
Waterloo ON N2J 4C6

Attention: Ms. Yolanda Pingos
Administrator

AND TO: **OSF Inc.**
5145 Steeles Avenue West
Weston ON M9L 1R5

Attention: Ms. Luann Izzett
Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Plan under section 69(1) of the PBA.

PROPOSED ORDER:

That the Pension Plan for OSF Inc., Registration Number 594366 (the "Plan"), be wound up in whole effective April 16, 2002.

REASONS:

1. The employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act*, pursuant to clause 69(1)(c) of the PBA.
2. All or a significant portion of the business carried on by the employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the PBA.
3. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to s. 89(6) of the PBA. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, this 20th day of December, 2002.

K. David Gordon
Deputy Superintendent, Pensions

[1]NOTE — PURSUANT to section 112 of the PBA any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 87(2) of the Act relating to the **Ontario Teachers' Pension Plan, Registration Number 0345785 (the "Plan");**

TO: **Ontario Teachers' Pension Plan Board**
5650 Yonge Street
Toronto, Ontario
M2M 4H5

Attention: Claude R. Lamoureux,
President & Chief Executive Officer

Administrator

AND TO: **Belyea & Associates Inc.**
208-39 Kimbercroft Court,
Scarborough, Ontario
M1S 5B5

Attention: Bryan N. Belyea,
Consulting Actuary

Agent of the Former Plan Member's Former Spouse

NOTICE OF PROPOSAL

I PROPOSE to make an order under sections 87(2)(a) and (c) of the Act requiring the administrator of the Plan (the "Administrator") to pay Ronald A. Wilson, a former Member of the Plan (the "Plan member") his pension in the form of a joint and survivor pension in accordance with section 44(1) of the Act.

REASONS:

1. The Superintendent may make an order under section 87 if he is of the opinion, on reasonable and probable grounds, that the pension plan or pension fund is not being administered in accordance with the Act, the regulations under the Act (the "regulations"), or the plan and/or that the administrator of the pension plan is contravening a requirement of the Act or the regulations.
2. Section 44(1) of the Act provides that every pension paid under a pension plan to a former member who has a spouse on the date that the payment of the first instalment of the pension is due shall be a joint and survivor pension. Section 44(4)(b) states that section 44(1) does not apply in respect of a former member who is living separate and apart from his or her spouse on the date that the payment of the first instalment of the pension is due.
3. Mr. Belyea, agent for the Plan member, notified the Superintendent that the Administrator has determined that the Plan member may not receive his pension in the form of a joint and survivor pension. The Plan member had a retirement date of January 31, 2000 and a pension start date of February 1, 2000. The Plan member and his spouse separated on February 7, 2000. The Plan member applied for the pension on February 21, 2000. The first monthly pension payment was deposited in the Plan member's account on April 28, 2000 and retroactive payments covering the months of February and March were deposited in his account on May 5, 2000.
4. Section 67(1) of the Plan provides that if a member dies on or after the first day of the month in which the first instalment of the pension is due, the person who is the spouse on the date the first instalment of the pension was due is entitled to a survivor pension. Section 67(2) states that this requirement does not apply if the member and the spouse were living separate and

apart on the date the first instalment of the member's pension was due.

5. Section 43(3) of the Plan provides that a retirement pension begins as of the beginning of the month following the date the member ceased to be employed in education or, at the election of the member, of any month thereafter (subject to the applicable *Income Tax Act* (Canada) rules).
6. The term "due" is defined in *Black's Law Dictionary*, 7th ed., as "owing or payable, constituting a debt" and in the *Dictionary of Canadian Law*, 2nd ed., as "payable, owing." The test in section 44(1) is the due date, not the date of actual payment.
7. The Plan member elected a pension start date of February 1, 2000. The payment of the first instalment of his pension was due on February 1, 2000, although it was not actually physically deposited into his account until May 5, 2000. As the Plan member and his spouse did not separate until February 7, 2000, he is entitled to receive his pension in the form of a joint and survivor pension under section 44 of the Act.
8. Section 48 of the Plan, which deals with the mechanics of processing a retirement application, is administrative in nature only. It cannot operate to remove the requirement that the pension be paid in the form of a joint and survivor pension in circumstances where the Plan member and his spouse were not living separate and apart on the date the payment of the first instalment of the pension was due (in this case, February 1, 2000).
9. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY REFUSE TO MAKE THE ORDER AS PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, this 8th day of January, 2003.

K. David Gordon
Deputy Superintendent, Pensions

[1]NOTE — PURSUANT to section 112 of the *Act* any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "PBA");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the PBA relating to the **Pension Plan for Employees of Pelee Group, Registration Number 1062512;**

TO: **London Life Insurance Company**
Group Retirement Services
255 Dufferin Avenue
London ON N6A 4K1

Attention: Ms. Nancy Galpin
Administrator

AND TO: **Pelee Group**
P.O. Box 85
Kingsville ON N9Y 2E8

Attention: Ms. Paula Pope
Employer

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Plan under section 69(1) of the PBA.

PROPOSED ORDER:

That the Pension Plan for Employees of Pelee Group, Registration Number 1062512 (the "Plan"), be wound up in whole effective November 30, 2001, and that the wind up apply to all members who terminated employment on or after October 14, 2001.

REASONS:

1. There is a cessation or suspension of contributions to the pension fund of the Plan;
2. There is a failure of the employer to make contributions to the pension fund as required by the PBA or the regulations; and
3. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to s. 89(6) of the PBA. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, this 17th day of January, 2003.

K. David Gordon
Deputy Superintendent, Pensions

[1]NOTE — PURSUANT to section 112 of the *PBA* any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "PBA");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the PBA relating to the **Group Pension Plan for the Employees of Mount Forest Ambulance Service Ltd., Registration Number 983510;**

TO: **Equitable Life Insurance Company**
One Westmount Road, North
P.O. Box 1603
Waterloo ON N2J 4C7

Attention: Ms. Lerma Aguto
Administrator

AND TO: **Mount Forest Ambulance Service Ltd.**
P.O. Box 4011
Mount Forest ON N0G 2L0

Attention: Mr. James A. Borrett, President
Employer

AND TO: **Ontario Public Service Employees' Union**
100 Lesmill Road
Toronto ON M3B 3P8

Attention: Ms. Shirley McVittie
Senior Benefits Counsellor
OPSEU, Local 226 Representative

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Plan under section 69(1) of the PBA.

PROPOSED ORDER:

That the Group Pension Plan for the Employees of Mount Forest Ambulance Service Ltd., Registration Number 983510 (the "Plan"), be wound up in whole effective January 31, 2001.

REASONS:

1. There was a cessation or suspension of employer contributions to the pension fund, pursuant to clause 69(1)(a) of the PBA;
2. A significant number of members of the Plan ceased to be employed by the employer as a result of the discontinuance of the business of the employer, pursuant to clause 69(1)(d) of the PBA;
3. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to s. 89(6) of the PBA. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

[1]NOTE — PURSUANT to section 112 of the PBA any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, this 7th day of February, 2003.

K. David Gordon
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act, respecting the **Everest & Jennings Canadian Limited Employees Pension Plan, Registration Number 0527671 (the "Pension Plan");**

TO: **London Life Insurance Company**
Suite 320
33 Yonge Street
Toronto ON M53 4C6

Attention: Lynn Barron
Customer Service Specialist

Administrator of the Everest & Jennings Canadian Limited Employees Pension Plan

AND TO: **Everest & Jennings Canadian Limited**
111 Snidercroft Road
Concord ON L4K 2J8

Attention: William N. James
Vice-President Finance

Employer

AND TO: **Deloitte & Touche Inc.**
181 Bay Street
Suite 1400
Toronto ON M5J 2V1

Attention: Robert Paul
Partner

Trustee in Bankruptcy for Everest & Jennings Canadian Limited

NOTICE OF PROPOSAL TO MAKE AN ORDER

I PROPOSE TO MAKE AN ORDER that the Everest & Jennings Canadian Limited Employees Pension Plan, Registration No. 0527671, be wound up in full effective December 19, 2001.

I propose to make this order pursuant to subsection 69(1) of the Act.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. There was a cessation or suspension of employer contributions to the pension fund.
2. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
3. A significant number of members of the pension plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.
4. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act, if, within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

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IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at Toronto, Ontario, this 13th day of February, 2003.

K. David Gordon
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act, in respect of the **Employee Retirement Plan for the Employees of Rosko Forestry Operations Ltd., Registration No. 1022409;**

TO: **Rosko Forestry Operations Ltd.**
P.O. Box 753
953 Government Road West
Kirkland Lake, Ontario
P2N 3K1

Attention: John Joseph Rosko, President
Employer and Administrator

NOTICE OF PROPOSAL

I PROPOSE TO MAKE AN ORDER in respect of the Employee Retirement Plan for Employees of Rosko Forestry Operations Ltd., Registration No. 1022409, under subsection 69(1) of the Act.

PROPOSED ORDER:

I order that the Employee Retirement Plan for Employees of Rosko Forestry Operations Ltd., Registration No. 1022409, be wound up in whole effective the date of the order proposed herein.

REASONS FOR THE ORDER:

1. Rosko Forestry Operations Ltd. is the employer and administrator of the Employee Retirement Plan for Employees of Rosko Forestry Operations Ltd, Registration No. 1022409.
2. The last payment of a required employer contribution was made on August 15, 2002, in respect of employer contributions for the month ending October 31, 2001. The last remittance of voluntary employee contributions was made on September 20, 2002, in respect of employee contributions deducted during the months ending November 30, 2001, December 31, 2001, and January 31, 2002.
3. Therefore, there was a cessation or suspension of employer contributions to the pension fund, within the meaning of clause 69(1)(a) of the Act.
4. Therefore, the employer failed to make contributions to the pension fund as required by the Act or the regulations within the meaning of clause 69(1)(b) of the Act.
5. Such further and other reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing within thirty (30) days after this Notice of Proposal is served on you.[1]

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
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FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by telephone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, this 13th day of February, 2003.

K. David Gordon
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 88 of the Act requiring the preparation of a new valuation report for the **Pension Plan for Slater Stainless Corp. Members of the National Automobile Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Registration Number 561456;**

TO: **Slater Stainless Corp.**
Markborough Place
6711 Mississauga Rd., Ste. 202
Mississauga ON L5N 2W3

Attention: Mr. Paul Davis,
Vice President & General Counsel

Employer and Administrator

NOTICE OF PROPOSAL

I PROPOSE TO ORDER Slater Stainless Corp., pursuant to section 88 of the Act, to prepare and file a new valuation report under section 14 of Regulation 909, R.R.O. 1990, as amended (the "Regulation") for the Pension Plan for Slater Stainless Corp. Members of the National Auto-mobile Aerospace, Transportation and General Workers Union of Canada (CAW-Canada), Registration Number 561456 (the "Plan") as at January 1, 2002, that calculates the solvency asset adjustment component of the solvency deficiency by applying an averaging method that stabilizes short-term fluctuations in the market value of the Plan assets calculated over a period that does not commence before July 1, 2001, within sixty (60) days from the date of the Order.

REASONS FOR THE PROPOSAL TO MAKE AN ORDER:

1. Slater Stainless Corp. ("Slater") is the employer and the administrator of the Plan.
2. Slater filed a valuation report as at January 1, 2002 for the Plan dated May 2002 (and subsequently filed an updated valuation report dated November 2002 to take into account the impact of an Early Retirement Window (the "Report")) as required under section 14(1) of the Regulation. The Report was prepared by Aon Consulting, Inc.
3. Section 17(1) of the Regulation requires a person preparing a section 14 valuation report to perform a valuation to determine the existence of a solvency deficiency (the "solvency valuation"). Section 14(8) of the Regulation requires a section 14 valuation report to indicate, on the basis of a solvency valuation, whether there is a solvency deficiency and the amount of the solvency deficiency. "Solvency deficiency" is defined in section 1(2) of the Regulation as the amount by which the sum of the solvency liabilities, the solvency liability adjustment and the prior year credit balance exceeds the adjusted asset value (which is the sum of the solvency assets and the solvency asset adjustment).
4. "Solvency assets" is defined in section 1(2) of the Regulation, and for the purposes of the Report means the market value of investments held by the Plan plus cash and accrued or receivable income.
5. "Solvency asset adjustment" is defined in section 1(2) of the Regulation in multiple parts, but the relevant component for the purposes of the Report is part (a) which is, "the amount, positive or negative, by which the value of the solvency assets are adjusted

as a result of applying an averaging method that stabilizes short-term fluctuations in the market value of the plan assets calculated over a period of not more than five years."

6. For the purposes of the solvency valuation, the Report adopted a solvency asset adjustment method which considers the average ratio of the market to book value of the Plan assets over the nine (9) quarter-ends prior to the valuation date. In prior reports, which were prepared by another actuarial firm, such a solvency asset adjustment method was not used.
7. The method used to calculate the solvency asset adjustment in the Report is set out on page 34 of the Report. Over the previous nine (9) quarters, the average ratio of the market value to the book value of the Plan assets was 1.5886. On January 1, 2002, the actual ratio of the market value to the book value of the Plan assets was 1.0713. In the Report, the book value of the Plan assets on January 1, 2002 was multiplied by 1.5886 in order to determine the solvency asset adjustment for the purposes of the solvency valuation.
8. The solvency asset adjustment method used in the Report resulted in an adjusted asset value that is 47.8% greater than the market value of the Plan assets on January 1, 2002.
9. The market value of the Plan assets (adjusted for an expense reserve and contributions receivable) is $139,060,000. The adjusted asset value is $205,579,000. The solvency liability is $153,965,000. Therefore, the solvency asset adjustment method used in the Report has the effect of eliminating the solvency deficiency that would otherwise have existed had the solvency asset adjustment not resulted in an adjusted asset value that is 47.8% greater than the market value of the Plan assets on January 1, 2002.
10. Prior to 2001, the market value of the Plan assets consistently exceeded the book value of the Plan assets by approximately 60% to 85%. The Plan assets were sold and repurchased on June 30, 2001, making the market value and book value of the Plan assets identical.
11. The Report's solvency asset adjustment method used a historical average ratio of market to book value that included seven (7) quarters in which the excess of market to book value was unrealized. Upon the sale and repurchase of the Plan assets on June 30, 2001, the excess of market to book value was realized and incorporated into the book value. Therefore, to apply a historical average ratio based on the prior book value to the present book value is to double count the excess of market to book value which occurred in the seven (7) quarters prior to June 30, 2001.
12. Section 88 of the Act authorizes the Superintendent of Financial Services (the "Superintendent") to make an order that may include, but is not limited to, requiring the preparation of a new report and specifying the assumptions or methods or both that shall be used in the preparation of the new report.
13. A section 88 order may be made when one of the conditions of section 88(2) has been met.
14. Section 88(2)(a) authorizes the Superintendent to make an order where the Superintendent is of the opinion that the assumptions or methods used in the preparation of a report required under the Act or the Regulation in respect of a pension plan are inappropriate for a pension plan.

15. **The Superintendent is of the opinion that the method of calculating the solvency asset adjustment adopted in the Report is inappropriate for the Plan.** It is inappropriate to calculate the solvency asset adjustment by applying the ratio of market to book value in the seven (7) quarters prior to June 30, 2001 without considering the impact of the sale and repurchase of the Plan assets on the book value after June 30, 2001.
16. Section 88(2)(b) authorizes the Superintendent to make an order where the Superintendent is of the opinion that the assumptions or methods used in the preparation of a report required under this Act or the Regulation in respect of a pension plan are not consistent with accepted actuarial practice.
17. **The Superintendent is of the opinion that the method of calculating the solvency asset adjustment adopted in the Report is not consistent with accepted actuarial practice** in that a method that produces an adjusted asset value that is 47.8% greater than the market value would not be considered accepted actuarial practice.
18. Section 88(2)(c) authorizes the Superintendent to make an order where the Superintendent is of the opinion that a report submitted in respect of a pension plan does not meet the requirements and qualifications of this Act, the Regulation or the pension plan.
19. **The Superintendent is of the opinion that the method of calculating the solvency asset adjustment adopted in the Report does not meet the requirements and qualifications of this Act, the Regulation or the Plan.** Specifically, the method of calculating the solvency asset adjustment does not meet the definition of "solvency asset adjustment" in section 1(2) of the Regulation. The solvency asset adjustment method used in the Report does not stabilize short-term fluctuations in the market value of the Plan assets; rather, it double counts the prior excess of market over book value, resulting in a distortion of the solvency deficiency calculation.
20. Such further and other reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

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IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, February 17, 2003.

K. David Gordon
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 88 of the Act requiring the preparation of a new valuation report for the **Pension Plan for Slater Stainless Corp. Members of the United Steel Workers of America (Local 7777), Registration Number 561464;**

TO: **Slater Stainless Corp.**
Markborough Place
6711 Mississauga Rd., Ste. 202
Mississauga ON L5N 2W3

Attention: Mr. Paul Davis,
Vice President & General Counsel

Employer and Administrator

NOTICE OF PROPOSAL

I PROPOSE TO ORDER Slater Stainless Corp., pursuant to section 88 of the Act, to prepare and file a new valuation report under section 14 of Regulation 909, R.R.O. 1990, as amended (the "Regulation") for the Pension Plan for Slater Stainless Corp. Members of the United Steel Workers of America (Local 7777), Registration Number 561464 (the "Plan") as at January 1, 2002, that calculates the solvency asset adjustment component of the solvency deficiency by applying an averaging method that stabilizes short-term fluctuations in the market value of the Plan assets calculated over a period that does not commence before July 1, 2001, within sixty (60) days from the date of the Order.

REASONS FOR THE PROPOSAL TO MAKE AN ORDER:

1. Slater Stainless Corp. ("Slater") is the employer and the administrator of the Plan.
2. Slater filed a valuation report as at January 1, 2002 for the Plan dated May 2002, (and subsequently filed an updated valuation report dated August 2002 to take into account the impact of an Early Retirement Window (the "Report")) as required under section 14(1) of the Regulation. The Report was prepared by Aon Consulting, Inc.
3. Section 17(1) of the Regulation requires a person preparing a section 14 valuation report to perform a valuation to determine the existence of a solvency deficiency (the "solvency valuation"). Section 14(8) of the Regulation requires a section 14 valuation report to indicate, on the basis of a solvency valuation, whether there is a solvency deficiency and the amount of the solvency deficiency. "Solvency deficiency" is defined in section 1(2) of the Regulation as the amount by which the sum of the solvency liabilities, the solvency liability adjustment and the prior year credit balance exceeds the adjusted asset value (which is the sum of the solvency assets and the solvency asset adjustment).
4. "Solvency assets" is defined in section 1(2) of the Regulation, and for the purposes of the Report means the market value of investments held by the Plan plus cash and accrued or receivable income.
5. "Solvency asset adjustment" is defined in section 1(2) of the Regulation in multiple parts, but the relevant component for the purposes of the Report is part (a) which is, "the amount, positive or negative, by which the value of the solvency assets are adjusted as a result of applying an averaging method that stabilizes short-term fluctuations in the market value of the plan assets calculated over a period of not more than five years."

6. For the purposes of the solvency valuation, the Report adopted a solvency asset adjustment method which considers the average ratio of the market to book value of the Plan assets over the nine (9) quarter-ends prior to the valuation date. In prior reports, which were prepared by another actuarial firm, such a solvency asset adjustment method was not used.
7. The method used to calculate the solvency asset adjustment in the Report is set out on page 34 of the Report. Over the previous nine (9) quarters, the average ratio of the market value to the book value of the Plan assets was 1.5656. On January 1, 2002, the actual ratio of the market value to the book value of the Plan assets was 1.0713. In the Report, the book value of the Plan assets on January 1, 2002 was multiplied by 1.5656 in order to determine the solvency asset adjustment for the purposes of the solvency valuation.
8. The solvency asset adjustment method used in the Report resulted in an adjusted asset value that is 45.0% greater than the market value of the Plan assets on January 1, 2002.
9. The market value of the Plan assets (adjusted for an expense reserve and contributions receivable) is $20,220,000. The adjusted asset value is $29,314,000. The solvency liability is $22,402,000. Therefore, the solvency asset adjustment method used in the Report has the effect of eliminating the solvency deficiency that would otherwise have existed had the solvency asset adjustment not resulted in an adjusted asset value that is 45.0% greater than the market value of the Plan assets on January 1, 2002.
10. Prior to 2001, the market value of the Plan assets consistently exceeded the book value of the Plan assets by approximately 60% to 85%. The Plan assets were sold and repurchased on June 30, 2001, making the market value and book value of the Plan assets identical.
11. The Report's solvency asset adjustment method used a historical average ratio of market to book value that included seven (7) quarters in which the excess of market to book value was unrealized. Upon the sale and repurchase of the Plan assets on June 30, 2001, the excess of market to book value was realized and incorporated into the book value. Therefore, to apply a historical average ratio based on the prior book value to the present book value is to double count the excess of market to book value which occurred in the seven (7) quarters prior to June 30, 2001.
12. Section 88 of the Act authorizes the Superintendent of Financial Services (the "Superintendent") to make an order that may include, but is not limited to, requiring the preparation of a new report and specifying the assumptions or methods or both that shall be used in the preparation of the new report.
13. A section 88 order may be made when one of the conditions of section 88(2) has been met.
14. Section 88(2)(a) authorizes the Superintendent to make an order where the Superintendent is of the opinion that the assumptions or methods used in the preparation of a report required under the Act or the Regulation in respect of a pension plan are inappropriate for a pension plan.

15. **The Superintendent is of the opinion that the method of calculating the solvency asset adjustment adopted in the Report is inappropriate for the Plan.** It is inappropriate to calculate the solvency asset adjustment by applying the ratio of market to book value in the seven (7) quarters prior to June 30, 2001, without considering the impact of the sale and repurchase of the Plan assets on the book value after June 30, 2001.
16. Section 88(2)(b) authorizes the Superintendent to make an order where the Superintendent is of the opinion that the assumptions or methods used in the preparation of a report required under this Act or the Regulation in respect of a pension plan are not consistent with accepted actuarial practice.
17. **The Superintendent is of the opinion that the method of calculating the solvency asset adjustment adopted in the Report is not consistent with accepted actuarial practice** in that a method that produces an adjusted asset value that is 45.0% greater than the market value would not be considered accepted actuarial practice.
18. Section 88(2)(c) authorizes the Superintendent to make an order where the Superintendent is of the opinion that a report submitted in respect of a pension plan does not meet the requirements and qualifications of this Act, the Regulation or the pension plan.
19. **The Superintendent is of the opinion that the method of calculating the solvency asset adjustment adopted in the Report does not meet the requirements and qualifications of this Act, the Regulation or the Plan.** Specifically, the method of calculating the solvency asset adjustment does not meet the definition of "solvency asset adjustment" in section 1(2) of the Regulation. The solvency asset adjustment method used in the Report does not stabilize short-term fluctuations in the market value of the Plan assets; rather, it double counts the prior excess of market over book value, resulting in a distortion of the solvency deficiency calculation.
20. Such further and other reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to section 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

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FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, February 17, 2003.

K. David Gordon
Deputy Superintendent, Pensions

Notices of Proposal to Make a Declaration

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Zettel Metalcraft Ltd. Local 396 CAW Pension Plan (the "Pension Plan"), Registration Number 0933515;**

TO: **Morneau Sobeco**
1500 Don Mills Road
Suite 500
Toronto ON M3B 3K4

Attention: Mr. Al Kiel
Partner
Administrator of the Zettel Metalcraft Ltd. Local 396 Pension Plan

AND TO: **Zettel Metalcraft Ltd.**
95 Cousins Drive
Aurora ON L4G 3H1

Attention: Mr. Tim Daley
Controller
Employer

AND TO: **Ernest Leyshon-Hughes C.A.**
7 Duke Street West
Suite 204
Kitchener ON N2H 6M7

Attention: Mr. Ernest Leyshon-Hughes
Trustee in Bankruptcy, Zettel Metalcraft Ltd.

AND TO: **CAW Local 396**
205 Placer Court
Toronto ON M2H 3H9

Attention: Mr. Sym Gill
Director
Union

NOTICE OF PROPOSAL TO MAKE A DECLARATION

WHEREAS:

1. The Zettel Metalcraft Ltd. Local 396 CAW Pension Plan, Registration No. 0933515 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended by the *Financial Services Commission of Ontario Act, 1997*, c. 28, (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the Act or the regulations made thereunder; and
3. The Pension Plan was wound up effective January 24, 1997; and
4. The Superintendent of Pensions initially appointed Deloitte & Touche Inc. as the administrator (the "Administrator") of the Pension Plan on March 20, 1997 and on July 11, 2002, appointed Morneau Sobeco as Administrator to replace Deloitte & Touche; and

NOW THEREFORE TAKE NOTICE I propose to consider to make a declaration pursuant to section 83 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The Supplement to the Actuarial Valuation Report filed by the Administrator indicates an estimated funding deficiency of $1,095,300 as at May 31, 2002 and an estimated claim against the Guarantee Fund as at May 31, 2002 of $954,200.00.

2. Ernest Leyshon-Hughes was appointed Trustee in Bankruptcy of Zettel Metalcraft Ltd. on February 6, 1997.
3. The Trustee in Bankruptcy for Zettel Metalcraft Ltd. has advised the Administrator that there are no funds available from the estate of Zettel Metalcraft Ltd. to make payment to the Pension Plan.
4. The Administrator has advised that they are reasonable and probable grounds for considering that the funding requirements of the Act and Regulation cannot be satisfied.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the Act, if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

ANY NOTICE requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York ON M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario this 5th day of February, 2003.

K. David Gordon
Deputy Superintendent, Pensions

[1]PURSUANT to section 112 of the *Act*, any Notice, Order or other document is sufficiently given, served or delivered personally or sent by first class mail and any documents sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

Notices of Proposal to Refuse to Make an Order

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended (the "PBA");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Refuse to Make an Order, under section 87(2)(a) of the PBA, Respecting the **Effem Inc. Associates' Retirement Plan, Registration No. 0393363;**

TO: **Mr. Constantin Munteanu**
213 Maplegrove Ave.
Bradford, Ontario
L3Z 1V3

Applicant

AND TO: **Effem Inc.**
37 Holland Drive
Bolton, Ontario
L7E 5S4

Attention: Ms. Alison Lumb
Manager, Payroll, Pension & Accounts Payable

Administrator

NOTICE OF PROPOSAL

I PROPOSE TO REFUSE TO MAKE AN ORDER under section 87(2)(a) of the PBA that the administrator of the Effem Inc. Associates' Retirement Plan, Registration No. 0393363 (the "Plan"), recalculate Mr. Munteanu's pension benefits.

REASONS FOR THE PROPOSAL TO REFUSE:

1. Mr. Munteanu retired from Effem Inc. on July 1, 1999 and began receiving benefits under the Plan. He requests the Superintendent of Financial Services (the "Superintendent") to order Effem Inc. (the "Administrator") to recalculate his benefits to take into account his full overtime pay for the years 1995, 1996, and 1997 as well as his holiday pay for 1996 and 1997.
2. The Superintendent can make an Order under section 87(2)(a) of the PBA if he is of the opinion, on reasonable and probable grounds, that a pension plan is not being administered in accordance with the PBA, the regulations made thereunder or the pension plan.
3. Section 7.01 of the Plan states:

   Normal/Postponed Retirement Pension: A Member who retires under the provisions of Section 6.01 or Section 6.03 shall be eligible to receive a monthly pension equal to the sum of the following:

   (a) 1.3% of his Final Average Earnings up to the Final Average YMPE multiplied by his Credited Service; plus

   (b) 2.0% of his Final Average Earnings in excess of the Final Average YMPE multiplied by his Credited Service.
4. Section 1.19 of the Plan states:

   "Final Average Earnings" means the monthly average (computed as provided below) of the Earnings received by the Member from the Employer in that period of 156 (52, effective January 1, 1994) consecutive calendar weeks occurring within the 260 (156, effective January 1, 1994) calendar week period ending with his Termination Date during which he received his highest Earnings from the Employer. The monthly average of a Member's Earnings shall be computed as follows:

   (a) First, by dividing the Member's total Earnings during the applicable 156 (52, effective January 1, 1994) week period specified above by 156 (52, effective January 1, 1994); and

   (b) Second, by multiplying the amount determined under (a) above by $4^{1/3}$.

5. Section 1.15 of the Plan states:

   "Earnings" includes the Member's (i) base and punctuality pay, shift premium and other bonuses excluding lump sum salary adjustment payments plus (ii) overtime pay to a maximum of 10% of (i) for services rendered to the Employer excluding cash in lieu of vacation.

6. Mr. Munteanu's position is that his full overtime pay for the years 1995, 1996 and 1997 should be included in "Earnings" for the purposes of calculating his monthly pension entitlement. He also submits that his holiday pay for 1996 and 1997 should be included in the calculation of his pension.

7. In an April 30, 2002 letter, Ms. Alison Lumb of the Administrator provided Mr. Munteanu with a copy of his pension calculations. She stated that his holiday pay was included in his base pay for 1996 and 1997. She pointed out that, under the definition of "Earnings" in section 1.15 of the Plan, overtime pay is included only up to the level of 10% of base pay.

8. The following example is based on the information set out in the April 30 letter from Ms. Lumb. In 1997, Mr. Munteanu's overtime pay was $30,552.94. His net earnings excluding overtime pay were $65,845.23. Therefore, his overtime pay was included in calculating "Earnings" only to the extent of 10% of $65,845.23, or $6,584.52. Although his gross earnings were $96,398.17, only $72,429.75 were attributable to "Earnings" as defined in the Plan.

9. In a letter of May 22, 2002, Ms. Lumb points out that under the Plan (section 1.19), only the final three years of earnings are used in calculating a Member's pension entitlement. Therefore it is unnecessary to include the year 1995 in the calculations.

10. It appears that the Plan Administrator has complied with the provisions of the Plan and has correctly calculated Mr. Munteanu's pension entitlement.

11. For the reasons set out above, the Superintendent is not of the opinion, on reasonable and probable grounds, that the Plan is not being administered in accordance with the PBA, the regulations or the Plan.

12. Such and further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to section 89(6) of the PBA. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

[1]NOTE – PURSUANT to section 112 of the *PBA* any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the date of mailing.

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY REFUSE TO MAKE THE ORDER PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, November 1, 2002.

K. David Gordon
Deputy Superintendent, Pensions
(by Delegated Authority)

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "PBA");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Refuse to Make an Order under Section 87(1) of the PBA Respecting the **AFG Industries Ltd. Retirement Plan as amended and restated as of March 1, 1998, Registration Number 290700 (the "AFG Plan");**

TO: **Mr. Robert Kerchbaumer**
R.R. 2
Ravena ON N0H 2E0
Applicant

AND TO: **AFG Industries Ltd.**
P.O. Box 929
Kingston TN 37662

Attention: Mr. Rick Stapleton
Director, Human Resources
Employer and Administrator

NOTICE OF PROPOSAL

I PROPOSE TO REFUSE TO MAKE AN ORDER under section 87(1) of the PBA directing AFG Industries Ltd. (the "Administrator") to calculate the amount of the annual pension payable to the Applicant under section 5.2(c) of the AFG Plan on the basis that section 5.2(c)(i) applies to the Applicant.

REASONS FOR THE REFUSAL:

1. The Applicant was a member of the Glaverbel Industries Inc. Salaried Pension Plan (the "Glaverbel Plan") immediately prior to January 1, 1983. The Applicant is therefore a Glaverbel Member within the meaning of 2.1(r) of the AFG Plan.
2. Section 5.2(c) of the AFG Plan sets out the formula for calculating the amount of annual pension payable to a Glaverbel Member. The first component of the formula is set out in section 5.2(c)(i), as follows: "1% of the Member's Glaverbel Earnings Average up to, plus 1.75% of his Glaverbel Earnings Average in excess of, the YMPE Average, multiplied by his Glaverbel Past Service".
3. "Glaverbel Past Service" is defined in section 2.1(s) of the AFG Plan as "the number of years of Glaverbel Plan pensionable service prior to 1970, as determined in accordance with the provisions of the Glaverbel Plan."
4. The Glaverbel Plan defines "Past Service" in section 1.16 as "completed years of Service as an Employee before 1970, excluding the first such year". "Service" is defined in section 1.19 of the Glaverbel Plan as "continuous employment with the Company, including periods of temporary suspensions of employment with or without remuneration." "Employee" is defined in section 1.7 of the Glaverbel Plan as "a regular salaried employee of the Company." "Company" is defined in section 1.4 of the Glaverbel Plan as "Glaverbel-Mecaniver Canada Limited or an Associated Company." The "Associated Companies" are listed in section 1.3 of the Glaverbel Plan.
5. For the Applicant's pre-1970 service to be counted as "Glaverbel Past Service" within the meaning of section 5.2(c)(i) of the AFG Plan, it must be established that he had "Past Service" as an "Employee" with either Glaverbel-Mecaniver Canada Limited or one of the companies listed as an "Associated Company" in section 1.3 of the Glaverbel Plan.
6. The Administrator has calculated the Applicant's pension on the basis that he does not have "Glaverbel Past Service" and has calculated his pension on the basis that section 5.2(c)(iv) of the AFG Plan applies to the Applicant's service prior to 1970.

7. The evidence is that the Applicant was an employee of a company called Consolidated Glass Industries Limited ("CGI") from May 6, 1959 until December 1, 1969. He was a member of The Retirement Plan for Salaried Employees of Consolidated Glass Industries Limited (the "CGI Plan"). The CGI Plan was wound up and its assets distributed effective December 1, 1969.
8. CGI does not appear on the list of "Associated Companies" in section 1.3 of the Glaverbel Plan.
9. While there is evidence that Glaverbel, S.A. of Brussels, Belgium became the sole shareholder of CGI in 1965, there is no basis to conclude that this resulted in a change in the Applicant's employment status. The Applicant continued to receive his remuneration from CGI until December 15, 1969. The *Pension Benefits Act, 1965*, S.O. 1965, Chapter 342 (the "1965 PBA") defines "employer" in relation to an "employee" as "the person, partnership, firm, association, institution or other unincorporated organization or corporation, wherever incorporated, carrying on business or established in Ontario, *from whom the employee receives his remuneration*" (Emphasis added.). A change in shareholders does not in itself change the employment status of the employees or the employer corporation.
10. The Applicant therefore does not have "Past Service" as an "Employee" with either Glaverbel-Mecaniver Canada Limited or one of the companies listed as an "Associated Company" in section 1.3 of the Glaverbel Plan and therefore does not have "Glaverbel Past Service" within the meaning of section 5.2(c)(i) of the AFG Plan. He is therefore not entitled to have the amount of his annual pension under the AFG Plan calculated on the basis that section 5.2(c)(i) applies to him.
11. The Superintendent of Financial Services (the "Superintendent") can make an order under section 87(1) if he is of the opinion, on reasonable and probable grounds, that the pension plan or pension fund is not being administered in accordance with the pension plan.
12. For the reasons set out above, the Superintendent is not of the opinion that the AFG Plan is not being administered in accordance with its terms.
13. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to s. 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

YOUR WRITTEN NOTICE must be delivered to:

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Toronto, Ontario
M2N 6L9

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FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY REFUSE TO MAKE THE ORDER AS PROPOSED IN THIS NOTICE.

DATED at Toronto, Ontario, this 8th day of November, 2002.

K. David Gordon
Deputy Superintendent, Pension Division
By Delegated Authority

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a request for an Order under section 87 of the Act submitted on behalf of Barbara Lewis, spouse and beneficiary of Harold Lewis, deceased, in connection with the calculation of pre-retirement death benefits in the **Retirement Plan for Unionized Employees of Donohue Forest Products Inc. — Pulp and Paper Divisions — Thorold Sector, Registration Number 0294496 (the "Plan");**

TO: **Barbara Lewis**
c/o Gordon H. Lewis
Suite 601–222 Wellesley Street East
Toronto ON M4X 1G4
Applicant

AND TO: **Donohue Forest Products Inc.**
500 Sherbrooke Street West,
Suite 800
Montreal QU H3A 3C6

Attention: Mr. Philippe Keough,
Benefits Coordinator
Employer

NOTICE OF PROPOSAL

I PROPOSE TO REFUSE TO MAKE AN ORDER under section 87(2)(a) and (c) of the Act requiring Donohue Forest Products Inc. (the "Employer") to comply with sections 37(3)(b) and 48(1) of the Act and the terms of the Plan in the calculation of the pre-retirement death benefits payable from the Plan to Barbara Lewis (the "Applicant") spouse of the late Harold Lewis.

REASONS FOR THE REFUSAL:

1. Sections 87(2)(a) and (c) of the Act allow the Superintendent to make an order if the Superintendent is of the opinion, upon reasonable and probable grounds that the Plan or pension fund is not being administered in accordance with the *Act*, the regulations or the Plan, or that the Employer is contravening a requirement of the *Act* or the regulations.
2. The Plan is a contributory, defined benefit pension plan.
3. Harold Lewis was a member of the Plan at the time of his death on November 23, 1997. At the time of his death, Mr. Lewis had credited service as defined in the Plan of approximately 30 years. Some of that credited service accrued prior to January 1, 1987 and some of that credited service accrued after December 31, 1986.
4. The Applicant is the surviving spouse of Harold Lewis and his beneficiary under the Plan, and as such is entitled to a pre-retirement death benefit under section 48(1) of the Act.
5. The Employer has included in the calculation of the value of the pre-retirement death benefit:
   a.) the value of the contributions made to the Plan by Mr. Lewis prior to January 1, 1987 (including interest); and
   b.) the commuted value of Mr. Lewis' deferred pension, based on his credited service in the Plan after 1986, as required by the terms of section 6.1 of the Plan, as amended.
6. The Applicant has requested the Superintendent to issue an order requiring the Employer to also include in the calculation of the value of the pre-retirement death benefit the commuted value of a deferred pension based on Mr. Lewis' credited service in the Plan prior to January 1, 1987.

7. The Applicant has submitted that Mr. Lewis' deferred pension was calculated according to an Amendment made to the Plan in Article 9. The Plan was amended by Amendment Number 1997-6 and Article 9 of that amendment repealed and replaced section 5.1 of the Plan text, effective May 1, 1993.
8. The Applicant has submitted that under section 37(3)(b) of the Act she would be entitled to a deferred pension equal to the pension benefit provided under any amendment made to the Plan after December 31, 1986. The Applicant has submitted that section 5.1 of the Plan was amended after December 31, 1986 and therefore the deferred pension should be calculated in accordance with section 5.1 of the Plan, which does not limit the calculation to benefits provided in respect of employment after December 31, 1986.
9. The Applicant's entitlement derives from section 6.1 of the Plan text, which provides a death benefit where a member dies before the commencement of his pension. Section 6.1 b)(2) provides that the Commuted Value of the benefits accrued to the member (excluding bridge benefits) **for Credited Service after 1986** is payable to the member's spouse, unless a waiver has been filed.
10. The formula for the calculation of the benefit derives from section 5.1 of the Plan, but the entitlement to the death benefit and the period for which the death benefit is calculated are set out in section 6.1 of the Plan. When section 5.1 was amended by Amendment Number 1997-6, it was not necessary to limit its application to service after 1986 in cases of pre-retirement death benefit calculations, because that limitation occurs in section 6.1, as detailed in paragraph 9 above.
11. Section 48(1) of the Act provides that if a member entitled to a deferred pension under section 37 dies before commencement of payment of the deferred pension, the person who is the spouse of the member on the date of death is entitled to receive a lump sum payment equal to the commuted value of the deferred pension, or to an immediate or deferred pension, the commuted value of which is at least equal to the commuted value of the deferred pension. Therefore the entitlement given by section 48 is limited to the deferred pension calculated under section 37 of the Act.
12. Section 37(3)(b) of the Act requires that the deferred pension include a pension benefit provided under any amendment made to the pension plan after December 31, 1986. In this case, two amendments were made to the Plan after December 31, 1986 and before the date of Mr. Lewis' death, which effected an increase in the pension benefits payable under the Plan. Those amendments occurred in the Revised and Restated Plan Text effective January 1, 1992 and in Amendment No. 1997-6 effective May 1, 1993. The Superintendent is satisfied that the calculation of the commuted value of Mr. Lewis' deferred pension included the increase in pension benefits for Mr. Lewis' entire period of credited service under the Plan, as required by these two amendments and by section 37(3)(b) of the Act.
13. The Applicant has asked for a declaration, in the alternative, that "the Actual Calculation and the Purported Calculation are invalid, that the pension benefit provided...under the pension plan in respect of employment

...after...the 31st day of December, 1986" as required by paragraph 37(3)(a) of the PBA does have an independent meaning and as such can be calculated and that the "benefit provided under any post reform amendment" cannot be negative." There is no authority under the *Act* for the Superintendent to make such a declaratory order.

14. For the reasons set out above, the Applicant has not demonstrated that the Employer has not complied with the requirements of the Plan and sections 37(3)(b) and 48(1) of the Act in calculating the pre-retirement death benefit to which the Applicant is entitled.
15. Such further and other reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the Tribunal) pursuant to section 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY REFUSE TO MAKE THE ORDER REQUESTED, AS PROPOSED IN THIS NOTICE.

DATED at North York, Ontario, November 8, 2002.

K. David Gordon
Deputy Superintendent, Pensions
By delegated authority

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IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services, under section 89(5) of the Act, to Refuse to Make an Order pursuant to section 69 of the Act, Respecting the **Pension Plan for Salaried Employees of Bestfoods Canada Inc., Registration No. 240358;**

TO: **Mr. Gerry O'Connor**
54 Pennycross Court
Woodbridge, ON
L4L 3M6

Applicant

AND TO: **Mr. Roberto Tomassini**
Koskie Minsky
20 Queen Street West
Suite 900, Box 52
Toronto, ON
M5H 3R3

Counsel for the Applicant

AND TO: **Unilever Canada**
160 Bloor Street East, Suite 1500
Toronto, Ontario
M4W 3R2

Attention: Mr. Tom Prychitka
Director of Pensions

Administrator

NOTICE OF PROPOSAL

I PROPOSE TO REFUSE TO MAKE AN ORDER under section 69 of the Act that the Pension Plan for Salaried Employees of Bestfoods Canada Inc., Registration No. 240358 (the "Plan") be wound up in part pursuant to section 69(1) of the Act.

REASONS FOR THE PROPOSAL TO REFUSE:

1. The Plan is a defined benefit pension plan established by the Canada Starch Operating Company Inc. ("Canada Starch"). In 1998, Canada Starch changed its name to Bestfoods Inc. and in 1999 to Bestfoods Canada Inc. Subsequently, Unilever Canada acquired Bestfoods Canada Inc. and Unilever Canada became the administrator of the Plan.
2. Mr. Gerry O'Connor was employed by Canada Starch from July 1987 to August 1997. He is a former member and beneficiary of the Plan, and he requests the Superintendent to order a partial wind up of the Plan in connection with his termination.
3. Canada Starch employees, including Mr. O'Connor, provided corporate services to a corn products business and a food products business operated by Canada Starch.
4. In December 1997, Canada Starch transferred the corn products business (the "corn products spin off") to a separate and newly established company called Canada Starch Operating Company (1998) Inc. ("Casco 1998"). At the time of the corn products spin off, Canada Starch employees, including those who provided corporate services to the corn products and food products businesses, were, with the exception of Mr. O'Connor, offered either positions with Casco 1998 or continued employment with Canada Starch. The employment of those former employees of Canada Starch who were offered employment by Casco 1998 is deemed not to be terminated by reason of the corn products spin off by virtue of subsection 80(3) of the *PBA*. Thus, only

Mr. O'Connor ceased to be employed as a result of the corn products spin off.

5. Clause 69(1)(d) of the Act states that the Superintendent may require the wind up of a pension plan in whole or in part if "a significant number of members of the pension plan cease to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer."
6. The corn products spin off does not give rise to grounds for a wind up under clause 69(1)(d) because a significant number of members did not cease to be employed as a result of the corn products spin off.
7. Moreover, there is insufficient evidence to conclude that a larger reorganization within the meaning of clause 69(1)(d) occurred over the period 1990 to 1998 as claimed by Mr. O'Connor.
8. Therefore, there are no grounds for ordering a partial wind up of the Plan under clause 69(1)(d) of the Act.
9. Section 69(1)(e) of the Act states that the Superintendent may require the wind up of a pension plan in whole or in part if "all or a significant portion of the business carried on by the employer at a specific location is discontinued."
10. Mr. O'Connor alleges that at the time of the corn products spin-off, Canada Starch's function of providing corporate services to the food and corn products businesses ended, leading to the closure of the Etobicoke office where Mr. O'Connor was employed. However, Canada Starch (under its new names Bestfoods Inc. and Bestfoods Canada Inc.) continued to operate offices at the Etobicoke location well after Mr. O'Connor's departure where individuals performing functions similar to those performed by Mr. O'Connor were employed.
11. Therefore, there was no discontinuance of all or a significant portion of the business carried on by the employer at the location where Mr. O'Connor was employed, and there are no grounds for ordering a partial wind up under clause 69(1)(e) of the Act.
12. Such and further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

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FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY REFUSE TO MAKE THE ORDER PROPOSED IN THIS NOTICE.

DATED at Toronto, Ontario, February 25, 2003.

K. David Gordon
Deputy Superintendent, Pensions

Notices of Proposal to Refuse to Consent to an Application

IN THE MATTER OF the *Pension Benefits Act* R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF an Application under ss. 78(1) of the Act submitted by Marks & Spencer Canada Inc. in respect of the **Retirement Income Plan for Employees of Marks & Spencer Canada Inc., Registration Number 387241 (the "Plan");**

TO: **Marks & Spencer Canada Inc.**
c/o Baker & McKenzie
Barristers & Solicitors
BCE Place, 181 Bay Street,
Suite 2100
P.O. Box 874
Toronto ON M5J 2T3

Attention: Mrs. Susan G. Seller

Employer and Administrator of the Plan

AND TO: **CAW Local 1000 of National Automobile, Aerospace, Transportation and General Workers Union of Canada (also known as Retail Wholesale Canada — CAW Division)**
6800 Campobello Road
Mississauga ON L5N 2L8

Attention: Mr. Mike Langdon

Union

NOTICE OF PROPOSAL TO REFUSE TO CONSENT TO APPLICATION

I PROPOSE TO REFUSE TO CONSENT to the application dated March 30, 2001, submitted by Marks & Spencer Canada Inc., for the payment of surplus on the windup of the Plan to the Employer under subsection 78(1) of the Act.

REASONS FOR PROPOSED REFUSAL:

1. The Plan was established as a result of the consolidation of several pension plans in 1976, including:
   a. the Pension Plan for Non-Bargaining Unit Salaried Employees of Smith's of Windsor Limited, dated August 1974 (the "Prior Smith Non-Bargaining Plan");
   b. the Pension Plan for Walker Stores Limited as amended to August 1, 1974 (the "Prior Walker Plan"); and
   c. the D'Allaird Manufacturing Co. Limited Pension Plan, effective October 1, 1974 (the "Prior D'Allaird Plan").
2. In 1984, the Non Contributory Pension and Retirement Plan for Bargaining Unit Employees of Smiths of Windsor (the "Smith Bargaining Plan") was merged into and included as a Prior Plan in the Plan.

PRIOR SMITH NON-BARGAINING PLAN

3. The Prior Smith Non-Bargaining Plan was created with an effective date of February 1, 1963. It was funded through a trust agreement with the Royal Trust Company Limited, which the Applicant has not produced. The original plan document evidenced an intention by the employer to create a trust, by identifying the trustee and the beneficiaries and by providing that all contributions would be paid into a trust fund and that all benefits would be paid from the trust fund. The plan document indicated that the trust fund would be administered by the trustee in accordance with the terms of the trust agreement. Although the trust agreement has not been produced, there is sufficient certainty to establish that a trust was created in 1963.

4. The trust agreement has not been produced and there is no other evidence that the employer was a beneficiary of the trust or that the employer reserved a power to revoke the trust.
5. The Prior Smith Non-Bargaining Plan provided that on discontinuance of the plan, "the Company cannot recover any sums paid to the date thereof and all the assets held pursuant to or for the purposes of the Plan must and shall be applied for the benefit of the Members, retired Members and their respective beneficiaries, estates and joint annuitants in such equitable manner as shall be determined by the Company in consultation with the Actuary."
6. Therefore the Prior Smith Non-Bargaining Plan did not provide for the payment of surplus to the employer on the wind up of the plan, and any subsequent amendments could not do so as no power to revoke the trust for the benefit of the members of the plan had been reserved.

PRIOR WALKER PLAN

7. The Prior Walker Plan was known as the Pension Plan for Gordon MacKay and Company Limited and Designated Subsidiary Companies when it was created in 1960 by the merger of two prior plans.
8. The recitals in the Prior Walker Plan refer to plans established in 1945 and 1949, but all documentation for the two prior plans is missing.
9. The Prior Walker Plan was funded through a trust agreement with the Royal Trust Company Limited, which the Applicant has not produced. Part I of the original plan document evidenced an intention by the employer to create a trust, by identifying the trustee and the beneficiaries and by providing that all contributions would be paid into a trust fund and that all benefits would be paid from the trust fund. The plan document indicated that the trust fund would be administered by the trustee in accordance with the terms of the trust agreement. Although the trust agreement has not been produced, there is sufficient certainty to establish that a trust was created in 1960.
10. The trust agreement has not been produced and there is no other evidence that the employer was a beneficiary of the trust or that the employer reserved a power to revoke the trust.
11. The Prior Walker Plan provided that "in the event of discontinuance of the Plan, in whole or in part, the Company cannot recover any sums paid to the date thereof and all the assets held pursuant to or for the purposes of the Plan must and shall be applied for the benefit of the members, retired members and their respective beneficiaries, estates and joint annuitants in such equitable manner as shall be determined by the Company in consultation with the Actuary."
12. Therefore the Prior Walker Plan did not provide for the payment of surplus to the employer on the wind up of the plan, and any subsequent amendments could not do so as no power to revoke the trust for the benefit of the members of the plan had been reserved.

PRIOR D'ALLAIRD PLAN

13. The Prior D'Allaird Plan was created in 1956 and provided for a trust fund to be administered by a trustee in accordance with a trust agreement. The employer reserved a right to modify or discontinue the plan and specified the manner in which the Pension Trust

Fund was to be distributed on termination. Subsection 18(E) provided that "If the remaining assets are more than adequate to meet the full requirements of each class such assets shall be allocated equitably to all Members."

14. The Prior D'Allaird Plan was funded through a trust agreement with the Royal Trust Company, which is included with the Application. The agreement provided that if the Plan is terminated, the trustee will dispose of the Fund in accordance with the written order of the Committee.
15. The Prior D'Allaird Plan was subject to a trust in favour of the members, the employer was not a beneficiary of the trust and the employer did not reserve a power to revoke that trust.
16. Therefore the Prior D'Allaird Plan did not provide for the payment of surplus to the employer on the wind up of the plan and any subsequent amendment could not do so as no power to revoke the trust for the benefit of the members had been reserved.

SMITH BARGAINING PLAN

17. The Smith Bargaining Plan was created in 1963, and the application does not disclose that this plan was subject to a trust. The funding documents for the 1963 plan have not been produced by the Applicant.
18. However, section 10.3 of the 1963 plan text provided that the Company shall have no right title or interest in the contributions made by it to the Fund and no part of the Fund shall revert to the Company. Termination of the plan was contemplated in section 12 and section 12.3 provided that, if after provision of all benefits was made, assets shall remain in the fund, "such assets shall be allocated on a pro rata basis." Section 12.3 when read together with section 10.3 means that the employer was not entitled to surplus on the termination of the Smith Bargaining Plan.
19. The Smith Bargaining Plan did not contain a power to amend the plan.
20. Therefore the Smith Bargaining Plan did not provide for the payment of surplus to the employer on the wind up of the plan, and there was no power to amend the plan to provide otherwise.
21. The Employer has therefore not demonstrated that it has complied with section 79(3)(b) of the Act which requires that the pension plan provide for payment of surplus to the employer on wind up of the Plan.
22. Such further and other grounds as may come to my attention.

YOU ARE ENTITLED TO A HEARING before the Financial Services Tribunal of Ontario (the "Tribunal") pursuant to subsection 89(6) of he Act. To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Proposal is served on you.[1]

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M2N 6L9

Attention: The Registrar

[1]PURSUANT to section 112 of the *Act*, any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

FOR FURTHER INFORMATION, contact the Registrar of the Tribunal by phone at 416-226-7752, or toll free at 1-800-668-0128, ext. 7752, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY REFUSE TO CONSENT TO THIS APPLICATION, AS PROPOSED IN THIS NOTICE OF PROPOSAL.

DATED at Toronto, Ontario, this 18th day of November, 2002.

K. David Gordon
Deputy Superintendent, Pensions

Orders that Pension Plans be Wound Up

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "PBA");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the PBA relating to the **Employee Retirement Plan for the Employees of Piccione Machine Tool & Gear Mfg., Registration Number 582080 (the "Plan");**

TO: **London Life Insurance Company**
Group Retirement Services
255 Dufferin Avenue
London ON N6A 4K1

Attention: Ms. Darlene Sundercock
Administrator

AND TO: **Piccione Machine Tool & Gear Mfg.**
32 Upton Road
Scarborough ON M1L 2B8

Attention: Ms. Lynda Piccione
Employer

ORDER

ON the 25th day of October, 2002, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make an Order (the "Notice of Proposal") to the Employer and to the Administrator of the Plan, pursuant to subsection 69(1) of the Act, that the Employee Retirement Plan for the Employees of Piccione Machine Tool & Gear Mfg., Registration Number 582080, be wholly wound up effective May 31, 2001.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with this matter.

IT IS THEREFORE ORDERED that the Employee Retirement Plan for the Employees of Piccione Machine Tool & Gear Mfg., Registration Number 582080 (the "Plan"), be wholly wound up effective May 31, 2001.

REASONS:

1. There was a failure of the employer to make contributions to the pension fund as required by the Act or the regulations, pursuant to clause 69(1)(b) of the PBA.
2. All or significant portion of the business carried on by the employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the PBA.

DATED at North York, Ontario, this 20th day of December, 2002.

Tom Golfetto
Director, Pension Plans Branch
By Delegated Authority from the
Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Contributory Pension Plan for Salaried Employees of McMaster University Including McMaster Divinity College 2000, Registration No. 1079920;**

TO: **McMaster University**
1280 Main Street West
Gilmour Hall — 202
Hamilton, Ontario
L8S 4K1

Attention: Karen Belaire
Vice-President Administration

Applicant and Employer

ORDER

ON September 30, 2002, the Superintendent of Financial Services caused to be served on McMaster University an Amended Notice of Proposal dated September 27, 2002, proposing to make an Order under subsection 78(1) of the Act consenting to the application by McMaster University for payment out of the Contributory Pension Plan for Salaried Employees of McMaster University Including McMaster Divinity College 2000, Registration No. 1079920 (the "Plan") to McMaster University in the amount of 50 per cent of Distributable Surplus adjusted in accordance with paragraphs (A), (B), and (C) of section 1(a)(viii) of the Surplus Sharing Settlement Agreement dated May 31, 2001 in respect of the Plan and filed with the Superintendent of Financial Services of Ontario by McMaster University (the "Agreement"). Such Distributable Surplus was estimated to be $152,842,041 as at July 1, 2000.

A REQUEST FOR HEARING dated October 22, 2002 was filed by a member of the Plan and was received by the Financial Services Tribunal (the "Tribunal") on October 23, 2002.

ON December 24, 2002, the hearing request was withdrawn.

ON January 6, 2003, the Tribunal confirmed that the Tribunal's file was closed.

NO OTHER Requests for Hearing have been filed with the Tribunal within the time set out in subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Contributory Pension Plan for Salaried Employees of McMaster University Including McMaster Divinity College 2000, Registration No. 1079920, to McMaster University in the amount of 50 per cent of the Distributable Surplus. The actual Distributable Surplus was $149,837,926 as at July 1, 2000 and shall be further adjusted from July 1, 2000 in accordance with paragraphs (B) and (C) of subsection 1(a)(viii) of the Agreement. The University Portion, as defined in the Agreement, shall be paid to McMaster University as soon as practicable after individual shares of the Member Portion, as defined in the Agreement, are paid or applied for the benefit of the members of the Surplus Sharing Group in the manner more particularly described in the Agreement.

DATED at Toronto, Ontario, this 14th day of January, 2003.

Tom Golfetto
Director, Pension Plans Branch
by delegated authority from the Superintendent of Financial Services of Ontario

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "PBA");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the PBA relating to the **Pension Plan for the Hourly Employees of Magnatek Polygon Transformer Co., a division of Magnatek National Electric Coil Limited, Registration Number 996942;**

TO: **Aon Consulting**
Suite 500
145 Wellington Street West
Toronto ON M5J 1H8

Attention: Mr. Brad Duce
Administrator

AND TO: **National Electric Coil (Polygon Transformer)**
50 Northline Road
North York ON M4B 3E2

Attention: Mr. Jim Gray
General Manager
Employer

AND TO: **Canadian Union of Operating Engineers & General Workers**
2087 Dundas Street East, Unit 103
Mississauga ON L4X 2V7

Attention: Mr. Grgar Zoran
Union Representative
Canadian Union of Operating Engineers & General Workers

AND TO: **Doane Raymond Limited**
P.O. Box 55
Royal Bank Plaza, Suite 1100,
North Tower
Toronto ON M5J 2P9

Attention: Mr. Ray Godbold
Trustee in Bankruptcy of Polygon Transformer Inc.

ORDER

ON November 12, 2002, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make an Order pursuant to subsection 69(1) of the Act, that the Pension Plan for the Hourly Employees of Magnatek Polygon Transformer Co., a division of Magnatek National Electric Coil Limited, Registration Number 996942, be wound up in whole effective December 31, 1993.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with this matter.

IT IS THEREFORE ORDERED that the Pension Plan for the Hourly Employees of Magnatek Polygon Transformer Co., a division of Magnatek National Electric Coil Limited, Registration Number 996942 (the "Plan"), be wound up in whole effective December 31, 1993.

REASONS:

1. There was a cessation or suspension of employer contributions to the Plan, pursuant to clause 69(1)(a) of the PBA.
2. There was a failure of the employer to make contributions to the Plan as required by the Act or the regulations, pursuant to clause 69(1)(b) of the PBA.

DATED at North York, Ontario, this 20th day of January, 2003.

Tom Golfetto
Director, Pension Plans Branch

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

AND IN THE MATTER OF a proposal by the Superintendentof Financial Services to Make an Order under section 87 of the Act respecting the **Retirement Plan for Employees of Dustbane Enterprises Limited, Registration Number 229419 (the "Plan");**

TO: **Dustbane Enterprises Limited**
25 Pickering Place
Ottawa, Ontario
K1G 5P4

Attention: John M. French
President

Employer and Administrator of the Plan

ORDER

ON OR ABOUT December 21, 1999, the Superintendent of Financial Services (erroneously described as the Superintendent of Financial Institutions) signed a Notice of Proposal to Make an Order against Dustbane Enterprises Limited ("Dustbane"), proposing to order Dustbane to pay into the pension fund for the Plan an amount equal to the total of all payments that, under the Act, the regulations and the Plan, are due or that have accrued and have not been paid into the pension fund as at June 1, 1990, plus interest to the date of payment, such payment to be paid within sixty (60) days from the date of the Proposed Order.

ON January 26, 2000, Dustbane requested a hearing before the Financial Services Tribunal (the "Tribunal") under section 89 of the Act.

ON April 14, 2000 and June 2, 2000, the Tribunal conducted a pre-hearing conference.

ON June 21, 2000, the Tribunal heard a motion brought by Dustbane seeking to compel the Superintendent to answer certain Interrogatories.

ON July 10, 2000, the Tribunal conducted a settlement conference. The proceeding did not settle.

ON July 18, 2000, the Tribunal issued a decision compelling the Superintendent to answer the Interrogatories that were the subject of the motion on June 21, 2000.

ON October 3, 4, 5, and 16, 2000, the Tribunal conducted the hearing.

ON February 15, 2001, the Tribunal issued its decision. The majority decision directed the Superintendent to carry out the proposal contained in the Notice of Proposal. One member of the Tribunal panel dissented.

ON March 16, 2001, Dustbane filed a Notice of Appeal respecting the Tribunal decision with the Divisional Court.

ON June 7, 2002, the Divisional Court heard and dismissed the appeal.

NO MOTION FOR LEAVE TO APPEAL the Divisional Court's decision has been filed with the Court of Appeal.

IT IS THEREFORE ORDERED THAT
Dustbane Enterprises Limited pay into the pension fund for the Retirement Plan for Employees of Dustbane Enterprises Limited an amount equal to $347,900.00, being the total of all payments that, under the Act, the regulations and the Plan, are due or that have accrued and have not been paid into the pension fund as at December 31, 2000, plus interest to the date of payment. Such payment is to be made by February 28, 2003.

REASONS:

1. The Plan is a plan that is registered under the Act as registration number 229419.

2. Dustbane Enterprises Limited is the employer pursuant to the definition of "employer" in the Act.
3. Dustbane Enterprises Limited ("Dustbane") partially wound up the Plan effective June 1, 1990.
4. A partial wind up report was filed with the Pension Commission of Ontario (now the Financial Services Commission of Ontario) on October 4, 1991.
5. The partial wind up report discloses a deficit in the pension fund for the Plan as at June 1, 1990.
6. The actuarial valuation filed by Dustbane's actuaries with the Superintendent of Financial Services on November 1, 2002, states that as at December 31, 2000, the deficit for that part of the Plan that was partially wound up effective June 1, 1990, was in the amount of $347,900.00.
7. Under subsection 75(1)(a) of the Act, when a pension plan is wound up in whole or in part, the employer shall pay into the pension fund an amount equal to the total of all payments that, under this Act, the regulations and the pension plan, are due or that have accrued and that have not been paid into the pension fund.
8. Under subsection 87(2)(c) of the Act, the Superintendent may by written order require an administrator or any other person to take any action in respect of a pension fund if the Superintendent is of the opinion, upon reasonable and probable grounds, that the employer is contravening a requirement of the Act or the regulations.

DATED at North York, Ontario, this 11th day of February, 2003.

K. David Gordon
Deputy Superintendent, Pensions

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order under section 69 of the Act respecting **The Pension Plan for OSF Inc., Registration Number 594366 (the "Pension Plan");**

TO: **The Manufacturers Life Insurance Company**
Canadian Pension Operations
500 King North, P.O. Box 1602
Waterloo ON N2J 4C6

Attention: Ms. Yolanda Pingos

Administrator of the Pension Plan

AND TO: **OSF Inc.**
5145 Steeles Avenue West
Weston ON M9L 1R5

Attention: Ms. Luann Izzett

Employer

AND TO: **Pollard & Associates Inc.**
27 Major Mackenzie Drive East, Suite 201
Richmond Hill ON L4C 1G6

Trustee in Bankruptcy for OSF Inc.

ORDER

ON or about the 20th day of December, 2002, the Deputy Superintendent, Pensions, issued a Notice of Proposal to Make an Order to the Employer and to the Administrator of the Pension Plan, pursuant to subsection 69(1) of the Act, that The Pension Plan for OSF Inc., Registration Number 594366, be wholly wound up effective April 16, 2002.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with this matter.

IT IS THEREFORE ORDERED that The Pension Plan for OSF Inc., Registration Number 594366, be wholly wound up effective April 16, 2002.

REASONS:

1. The employer is bankrupt within the meaning of the *Bankruptcy & Insolvency Act* (Canada), pursuant to clause 69(1)(c) of the Act; and
2. A significant portion of the business carried on by the employer at a specific location was discontinued, pursuant to clause 69(1)(e) of the Act.

DATED at Toronto, Ontario, this 24th day of February, 2003.

Tom Golfetto
Director, Pension Plans Branch
By Delegated Authority from the
Superintendent of Financial Services

Consents to Payments of Surplus out of Wound up Pension Plans

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Staff Pension Plan for Employees of Furmanite Canada Ltd., Registration No. 428557;**

TO: **Furmanite Canada Ltd.**
862 Upper Canada Drive, Unit 9
Sarnia ON N7T 7H3

Attention: Mr. Dan Stitt
President

Applicant and Employer

CONSENT

ON or about September 12, 2002, the Superintendent of Financial Services caused to be served on Furmanite Canada Ltd. a Notice of Proposal dated September 11, 2002, to consent, pursuant to subsection 78(1) of the Act, to payment out of the Staff Pension Plan for Employees of Furmanite Canada Ltd., Registration No. 428557, to Furmanite Canada Ltd. in the amount of $88,330 as at September 30, 1997 plus investment earnings and other adjustments thereon to the date of payment.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Staff Pension Plan for Employees of Furmanite Canada Ltd., Registration No. 428557, of $88,330 as at September 30, 1997 plus investment earnings and other adjustments thereon to the date of payment, to Furmanite Canada Ltd.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement made by the Applicant and the members, former members and other persons entitled to payments from the fund) and any other payments to which the members, former members, and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

DATED at Toronto, Ontario, this 29th day of October, 2002.

Tom Golfetto
Director, Pension Plans Branch
by delegated authority from the Superintendent of Financial Services

Copy: Marian McKillop,
Corporate Benefit Analysts, Inc.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Eaton Superannuation Plan for Designated Employees, Registration No. 0593673;**

TO: **Richter and Partners Inc.**
c/o Fasken Martineau DuMoulin LLP
66 Wellington Street West
Suite 4200, Toronto Dominion Bank Tower
Box 20, Toronto Dominion Centre
Toronto ON M5K 1N6

Attention: Brent K. Duguid

The Applicant

CONSENT

ON or about September 23, 2002, the Superintendent of Financial Services caused to be served on Richter and Partners Inc., Liquidator of Distributionco Inc., a Notice of Proposal dated September 20, 2002, to consent, pursuant to subsection 78(1) of the Act, to payment out of the Eaton Superannuation Plan for Designated Employees, Registration No. 0593673 (the "Plan"), to Richter and Partners Inc., Liquidator of Distributionco Inc. in the amount of $354,700 as at December 31, 2001 plus investment earnings thereon to the date of payment, and adjusted for actual expenses incurred in connection with this Application.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Eaton Superannuation Plan for Designated Employees, Registration No. 0593673, of $354,700 to Richter and Partners Inc., Liquidator of Distributionco Inc.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that the payment of the members' share of the negotiated share of the surplus has been made.

DATED at Toronto, Ontario, this 12th day of November, 2002.

Tom Golfetto
Director, Pension Plans Branch
by delegated authority from the Superintendent of Financial Services

cc: Paul Macphail, PricewaterhouseCoopers Inc.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(4) of the Act consenting to a payment out of **Dry-Ac Ltd. Executive Pension Plan, Registration No. 987057;**

TO: **Dry-Ac Ltd.**
98 Daffodil Crescent
Ancaster ON L9K 1E2

Attention: Eugene Campbell
President & Secretary

Applicant and Employer

CONSENT

ON August 15, 2002, the Superintendent of Financial Services caused to be served on Dry-Ac Ltd. a Notice of Proposal dated August 14, 2002, to consent, pursuant to subsection 78(1) of the Act, to payment out of the Dry-Ac Ltd. Executive Pension Plan, Registration No. 987057 (the "Plan"), to Dry-Ac Ltd. in the amount of $92,800 as at February 1, 2001 plus earnings there on to the date of payment.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of Dry-Ac Ltd. Executive Pension Plan, Registration No. 987057, of $92,800 as at February 1, 2001 plus interest at the fund rate of return thereon to the date of payment, to Dry-Act Ltd.

THIS CONSENT IS EFFECTIVE ONLY AFTER the applicant satisfies me that a provision has been made for the payment of liabilities of the pension plan as calculated for purposes of termination of the pension plan.

DATED at Toronto, Ontario, this 14th day of November, 2002.

Tom Golfetto
Director, Pension Plans Branch
by delegated authority from the Superintendent of Financial Services

c.c. Jean Robichaud,
The Standard Life Assurance Company

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(4) of the Act consenting to a payment out of the **AFG Industries Ltd. Salaried Pension Plan, Registration No. 1070853;**

TO: **AFG Industries Ltd.**
1400 Lincoln Street
Kingsport TN 37660
U.S.A.

Attention: Mr. Steven E. Kramer
Vice President,
Human Resources and
General Counsel

Applicant and Employer

CONSENT

ON or about August 8, 2002, the Superintendent of Financial Services caused to be served on AFG Industries Ltd., a Notice of Proposal dated August 2, 2002 to consent, pursuant to subsection 78(4) of the Act, to payment out of the AFG Industries Ltd. Salaried Pension Plan, Registration No. 1070853 (the "Plan"), to AFG Industries Ltd. in the amount of $14,303,441 as at January 10, 2001, plus earnings thereon to the date of payment.

A request for hearing was received. However, it was withdrawn on November 22, 2002 and the Financial Services Tribunal has closed its file. No other Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES, THEREFORE, CONSENTS to the payment out of the AFG Industries Ltd. Salaried Pension Plan, Registration No. 1070853, of $14,303,441, to AFG Industries Ltd.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that all the consenting members and former members' entitlements from the plan have first been transferred out and paid to the members or otherwise provided for.

DATED at Toronto, Ontario, this 10th day of December, 2002.

Tom Golfetto
Director, Pension Plans Branch
by delegated authority from the Superintendent of Financial Services

c.c. Audrey Mak, Fraser Milner Casgrain
Mark Zigler, Koskie Minsky

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(1) of the Act consenting to a payment out of the **Pension Plan for Employees of The Wool Bureau of Canada Limited, Registration No. 0314187;**

TO: **Woolmark Americas, Ltd.**
7 Purdue Road
Edison, New Jersey
USA 08820

Attention: John McGowan, President

Applicant, Employer and Administrator of the Plan

CONSENT

ON or about October 9th, 2002, the Superintendent of Financial Services caused to be served on Woolmark Americas, Ltd. a Notice of Proposal dated October 8, 2002, to consent, pursuant to subsection 78(1) of the Act, to payment out of the Pension Plan for Employees of The Wool Bureau of Canada Limited, Registration No.0314187, to Woolmark Americas, Ltd. of the Net Company Surplus, as defined therein.

NO NOTICE requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Pension Plan for Employees of The Wool Bureau of Canada Limited, Registration No. 0314187 (the "Plan"), of the Net Company Surplus to Woolmark Americas, Ltd. (the "Applicant"). Net Company Surplus means 50% of the Surplus less the reasonable legal fees, disbursements and taxes charged to the Applicant after January 1, 1999 in respect of the wind up of the Plan and the distribution of Surplus. Surplus means the surplus in the Plan, plus investment earnings thereon, after deducting actuarial expenses in connection with the wind up of the Plan including the distribution of surplus, but prior to deducting the reasonable legal fees, disbursements and taxes charged to the Applicant after January 1, 1999, in respect of the wind up of the Plan and the distribution of Surplus and the reasonable legal fees, disbursements and taxes charged for services to the Members after January 1, 2000, in respect of the distribution of Surplus.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that the payment of the Members' share of the negotiated surplus has been made.

DATED at Toronto, Ontario, this 10th day of December, 2002.

Tom Golfetto
Director, Pension Plans Branch
by delegated authority from the Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(4) of the Act consenting to a payment out of the **Maple Leaf Foods Inc. Employees Retirement Plan 100, Registration No. 0303180;**

TO: **Maple Leaf Foods Inc.**
150 Bartor Road
Weston ON M9M 1H1

Attention: Mr. Jim Pickering
Director, Pensions & Benefits

Applicant and Employer

CONSENT

ON or about November 15, 2002, the Superintendent of Financial Services caused to be served on Maple Leaf Foods Inc. a Notice of Proposal dated November 15, 2002 to consent, pursuant to subsection 78(1) of the Act, to payment out of the Maple Leaf Foods Inc. Employees Retirement Plan 100, Registration No. 0303180 (The "Plan"), to Maple Leaf Foods Inc. in the amount of $29,024,817 as at December 31, 2001 adjusted for actual expenses plus investment earnings thereon to the date of payment.

A Notice requesting a hearing was delivered to the Financial Services Tribunal within the time prescribed by subsection 89(6) of the Act, however, this request was subsequently withdrawn by notice delivered to the Registrar on December 23, 2002. There was no other Notice requiring a hearing delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Maple Leaf Foods Inc. Employees Retirement Plan 100, Registration No. 0303180, of $29,024,817 as at December 31, 2001 adjusted for actual expenses plus investment earnings thereon to the date of payment, to Maple Leaf Foods Inc.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that all benefits, benefit enhancements (including benefit enhancements pursuant to the Surplus Sharing Agreement made by the Applicant and the affected members and former members) and any other payments which members, former members and any other persons entitled to such payments have been paid, purchased, or otherwise provided for and satisfies me that all requirements of the *Quebec Supplemental Pension Plans Act* R.S.Q. 1990, R-15.1, as amended have been met.

DATED at Toronto, Ontario, this 30th day of December, 2002.

Tom Golfetto
Director, Pension Plans Branch
by delegated authority from the Superintendent of Financial Services

Copy: Randy Bauslaugh, Blake, Blake, Cassels & Graydon LLP
Michael Millns, Towers Perrin
John Evans, Evans Law Firm
Paul Fox, Fox, Clarke, Dollak
David Brown, Eckler Partners Ltd.
Mark Faiz Faiz & Associates Inc.
Catherine Anderson, Blake, Cassels & Graydon
Anthony Cooper, Anthony Cooper Actuarial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, 1997, S.O. 1997, c. 28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make an Order under subsection 78(4) of the Act consenting to a payment out of the **BASF Pension Plan for Canadian Management Represented Employees, Registration No. 556613;**

TO: **BASF Canada**
345 Carlingview Drive
Toronto ON M9W 6N9

Attention: Mr. Peter Sinclair

CONSENT

ON or about December 17, 2002, the Superintendent of Financial Services caused to be served on BASF Canada a Notice of Proposal dated December 10, 2002 to consent, pursuant to subsection 78(4) of the Act, to payment out of the BASF Pension Plan for Canadian Management Represented Employees, Registration No. 556613, to BASF Canada in the amount of $219,018.62 as at September 30, 2001 plus interest, at the fund rate of return thereon, to the date of payment.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the Act.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the BASF Pension Plan for Canadian Management Represented Employees, Registration No. 556613, of $219,018.62 as at September 30, 2001 plus interest, at the fund rate of return thereon, to the date of payment, to BASF Canada.

DATED at Toronto, Ontario, this 7th day of February, 2003.

Tom Golfetto
Director, Pension Plans Branch
by delegated authority from the Superintendent of Financial Services

cc: Ms. Ofelia Isabel, Towers Perrin
Penny McIlraith, FSCO,
Pension Plans Branch

Declaration that the Pension Benefits Guarantee Fund Applies to Pension Plans — Subsection 83(1) of the PBA

IN THE MATTER OF the *Pension BenefitsAct*, R.S.O. 1990, c. P. 8, as amended (the "PBA");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the PBA respecting the **The Algoma Steel Inc. Salaried Employees Pension Plan for Employees in Canada, Registration Number 0335810;**

TO: **Morneau Sobeco**
Deloitte & Touche Inc.
1500 Don Mills Road
Toronto ON M3B 3K4

Attention: Mr. Al Kiel
Partner

Administrator of The Algoma Steel Inc. Salaried Employees Pension Plan for Employees in Canada

AND TO: **Algoma Steel Inc.**
105 West Street
Sault Ste. Marie ON P6A 7B4

Attention: Mr. Paul C. Finley
General Counsel and Corporate Secretary

Employer

AND TO: **The United Steelworkers of America**
c/o Days Inn, 320 Bay Street, Room 15
Sault Ste. Marie ON P6A 1X1

Attention: Mr. Ian Kersley
President, Local Union 2724

Union

DECLARATION

WHEREAS:

1. The Algoma Steel Inc. Salaried Employees Pension Plan for Employees in Canada, Registration No. 0335810 (the "Pension Plan"), is registered under the PBA;
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the PBA or the regulations made thereunder;
3. Algoma Steel Inc. (Algoma) instituted proceedings under the Companies' *Creditors Arrangement Act*, and its Plan of Reorganization was approved by its creditors and sanctioned by the court on December 19, 2001;
4. The Pension Plan was terminated effective September 17, 2001 by Algoma Steel Inc. in accordance with section 68 of the PBA;
5. The Superintendent of Financial Services appointed Morneau Sobeco as administrator (the "Administrator") of the Pension Plan on September 6, 2002;
6. On October 22, 2002, the Deputy Superintendent, Pensions issued a Notice of Proposal dated October 11, 2002 to Make a Declaration that the Guarantee Fund applies to the Pension Plan; and
7. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the Act, has been received.

NOW THEREFORE TAKE NOTICE I declare pursuant to sections 83 and 89 of the Act, that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The Report on the Plan Wind Up and Pension Benefits Guarantee Fund Application as at September 17, 2001, indi-

cates an estimated funding deficiency of $79,977,000 and an estimated funded ratio of 75.68%.

2. The Superintendent of Financial Services and Algoma entered into an agreement dated January 29, 2002 which specifically requires Algoma to file the application for a declaration that the Guarantee Fund applies to the Pension Plan.
3. The Superintendent of Financial services is satisfied that Algoma could not meet the funding requirements of the PBA for the Pension Plan, as of the effective date of the wind up of the Pension Plan.

DATED at North York, Ontario this 13th day of December, 2002.

Tom Golfetto
Director, Pension Plans Branch
By delegated authority from the Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "PBA");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the PBA respecting the **Non-Contributory Pension Plan Covering Hourly Paid Bargaining Unit Employees of Algoma Inc., Registration Number 0335802;**

TO: **Morneau Sobeco**
Deloitte & Touche Inc.
1500 Don Mills Road
Toronto ON M3B 3K4

Attention: Mr. Al Kiel
Partner

Administrator of the Non-Contributory Pension Plan Covering Hourly Paid Bargaining Unit Employees of Algoma Steel Inc.

AND TO: **Algoma Steel Inc.**
105 West Street
Sault Ste. Marie ON P6A 7B4

Attention: Mr. Paul C. Finley
General Counsel and Corporate Secretary

Employer

AND TO: **The United Steelworkers of America**
68 Dennis Street
Sault Ste. Marie ON P6A 2W9

Attention: Mr. Tom Bonell
President, Local Union 2251

Union

DECLARATION

WHEREAS:

1. The Non-Contributory Pension Plan Covering Hourly Paid Bargaining Unit Employees of Algoma Steel Inc., Registration No. 0335802 (the "Pension Plan"), is registered under the PBA;
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund"), by the PBA or the regulations made thereunder;
3. Algoma Steel Inc. (Algoma) instituted proceedings under the Companies' *Creditors Arrangement Act*, and its Plan of Reorganization was approved by its creditors and sanctioned by the court on December 19, 2001;
4. The Pension Plan was terminated effective September 17, 2001 by Algoma Steel Inc. in accordance with section 68 of the PBA;
5. The Superintendent of Financial Services appointed Morneau Sobeco as administrator (the "Administrator") of the Pension Plan on September 6, 2002;
6. On October 22, 2002, the Deputy Superintendent, Pensions, issued a Notice of Proposal dated October 18, 2002, to make a Declaration that the Guarantee Fund applies to the Pension Plan; and
7. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the Act, has been received.

NOW THEREFORE TAKE NOTICE I declare pursuant to sections 83 and 89 of the Act that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The Report on the Plan Wind-up and Pension Benefits Guarantee Fund Application as at September 17, 2001 indicates an estimated funding deficiency of $361,983,300 and an estimated funded ratio of 52.94%.
2. The Superintendent of Financial Services and Algoma entered into an agreement dated January 29, 2002 which specifically requires Algoma to file the application for a declaration that the Guarantee Fund applies to the Pension Plan.
3. The Superintendent of Financial services is satisfied that Algoma could not meet the funding requirements of the PBA for the Pension Plan, as of the effective date of the wind up of the Pension Plan.

DATED at North York, Ontario this 17th day of December, 2002.

Tom Golfetto
Director, Pension Plans Branch
By delegated authority from the Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Gallaher Thorold Paper Co. Hourly Paid Pension Plan, Registration Number 1039981;**

TO: **Morneau Sobeco**
895 Don Mills Road
One Morneau Sobeco Centre
Suite 700
Toronto ON M3C 3W3

Attention: Mr. David R. Kearney

Administrator

Ernst & Young Inc.
Ernst & Young Tower
P.O. Box 251, 222 Bay Street
Toronto-Dominion Centre
Toronto ON M5K 1J7

Attention: Mr. Philip Kan, Manager

Trustee in Bankruptcy for Gallaher Thorold Paper Co.

AND TO: **International Union of Operating Engineers Local 772**
370 Main Street East, Suite 302
Hamilton ON L8N 1J6

Attention: Greg Hoath, President

Communications Energy and Paper Workers Union of Canada Locals 290 and 1521
5890 Aspen Court
Niagara Falls ON L2G 7V3

Attention: Michael Lambert

DECLARATION

WHEREAS:

1. The Gallaher Thorold Paper Co. Hourly Paid Pension Plan, Registration Number 1039981 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund"), by the Act or the regulations made thereunder; and
3. The Deputy Superintendent, Pensions, appointed Morneau Sobeco as the administrator (the "Administrator") of the Plan on July 10, 2002, to replace the previously-appointed administrator, Arthur Andersen Inc., and
4. On July 15, 2002 the Deputy Superintendent, Pensions, issued an Order dated July 12, 2002, that the Plan be wound up effective May 25, 1999, and on November 6, 2002, approved the wind up report filed for the Plan subject to any additional funding that may be required from the Guarantee Fund, and
5. On October 4, 2002, the Deputy Superintendent, Pensions, issued a notice of proposal to make a declaration that the Guarantee Fund applies to the Plan, and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the Act, has been received.

NOW THEREFORE TAKE NOTICE I declare pursuant to sections 83 and 89 of the Act that the Guarantee Fund applies to the Plan for the following reasons:

1. The funded ratio of the Plan at wind up has been estimated to be 73.60%.
2. The employer, Gallaher Thorold Paper Co., was assigned into bankruptcy on June 15, 1999.
3. The trustee in bankruptcy for Gallaher Thorold Paper Co. has advised the Administrator that there are no funds available from the estate of Gallaher Thorold Paper Co. to make payment to the Plan.
4. The Administrator advised that it is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the Act and regulation cannot be satisfied.

DATED at North York, Ontario this 8th day of January, 2003.

Tom Golfetto
Director, Pension Plans Branch
By Delegated Authority from the
Superinten-dent of Financial Services.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28, respecting the **Pension Plan for Employees of Vulcan Packaging Inc. (the "Pension Plan"), Registration Number 0364323;**

TO: **Morneau Sobeco**
Deloitte & Touche Inc.
1500 Don Mills Road
Toronto ON M3B 3K4

Attention: Mr. Al Kiel
Partner

Administrator of the Pension Plan for Employees of Vulcan Packaging Inc.

AND TO: **Vulcan Packaging Inc.**
15 Bethridge Road
Rexdale ON M9W 1M6

Attention: Mr. Alex Telfer
President

Employer

AND TO: **Ernst & Young Inc.**
175 Commerce Valley Drive West
Suite 600
Thornhill ON L3T 7P6

Attention: Mr. Harold Reiter

Trustee in Bankruptcy, Vulcan Packaging Inc.

DECLARATION

WHEREAS:

1. The Pension Plan for Employees of Vulcan Packaging Inc., Registration No. 0364323 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 as amended by the *Financial Services Commission of Ontario Act, 1997*, c. 28, (the "Act"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund"), by the Act or the regulations made thereunder; and
3. The Pension Plan was wound up effective May 15, 1997; and
4. The Superintendent of Pensions appointed Deloitte & Touche Inc.as the administrator (the "Administrator") of the Pension Plan on August 1, 1997 and on August 11, 2002, appointed Morneau Sobeco as Administrator to replace Deloitte & Touche Inc.; and
5. On October 4, 2002, I issued a Notice of Proposal dated October 3, 2002 to make a Declaration that the Guarantee Fund applies to the Pension Plan; and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the Act, has been received.

NOW THEREFORE TAKE NOTICE I declare, pursuant to sections 83 and 89 of the Act, that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The Supplement to the Actuarial Valuation Report filed by the Administrator indicates an estimated funding deficience of $1,252,900 as at May 31, 2002 and an estimated claim against the Guarantee Fund of $1,223,400.00 as at May 31, 2002.

2. Ernst & Young Inc. was appointed Trustee in Bankruptcy of Vulcan Packaging Inc. on May 15, 1997.
3. The Trustee in Bankruptcy for Vulcan packaging Inc. has advised the Administrator that there are no funds from the estate of Vulcan Packaging Inc. to make payments to the Pension Plan
4. The Administrator has advised that it is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the Act and Regulation cannot be satisfied.

DATED at North York, Ontario this 8th day of January, 2003.

K. David Gordon
Deputy Superintendent, Pensions

TRIBUNAL ACTIVITIES

Appointments of Tribunal Members

Name and O.C.	Effective Appointment Date	Expiry Date
Milczynski, Martha (Chair)		
O.C. 1622/2001	June 20, 2001	June 19, 2004
O.C. 1665/99	October 6, 1999	July 7, 2001
O.C. 1808/98	July 8, 1998	October 6, 1999
McNairn, Colin (Vice-Chair)		
O.C. 1623/2001	June 20, 2001	June 19, 2004**
O.C. 1809/98	July 8, 1998	July 7, 2001
Corbett, Anne (Vice-Chair Acting)		
O.C. 1438/2001	June 20, 2001	June 19, 2004**
Ashe, Kevin		
O.C. 1510/2002	September 26, 2002	September 25, 2005
Bharmal, Shiraz Y.M.		
O.C. 1511/2002	September 9, 2002	September 8, 2005
Erlichman, Louis		
O.C. 439/2002	January 23, 2002	January 22, 2005**
O.C. 2527/98	December 9, 1998	December 8, 2001
O.C. 1592/98	June 17, 1998	December 16, 1998
Gavin, Heather		
O.C. 440/2002	January 23, 2002	January 22, 2005**
O.C. 11/99	January 13, 1999	January 12, 2002
Litner, Paul W.		
O.C. 1512/2002	September 9, 2002	September 8, 2005
Martin, Joseph P.		
O.C. 1626/2001	June 20, 2001	June 19, 2004**
O.C. 1810/98	July 8, 1998	July 7, 2001
Moore, C.S. (Kit)		
O.C. 1625/2001	June 20, 2001	June 19, 2004**
O.C. 1591/98	July 1, 1998	June 30, 2001
Short, David A.		
O.C. 2118/2001	October 24, 2001	October 23, 2004**
Vincent, J. David		
O.C. 2119/2001	October 24, 2001	October 23, 2004**

** **Or on the day FSCO/OSC merges, if earlier**

Pension Hearings Before the Financial Services Tribunal

Imperial Oil Limited

Imperial Oil Limited Retirement Plan (1988), Registration Number 347054 and the Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac Inc. Registration Number 344002, FST File Number P0130-2000;

On October 31, 2000, Imperial Oil Limited requested a hearing with respect to the Superintendent's Notice of Proposal dated October 3, 2000, proposing to refuse to approve Partial Wind Up Reports in respect of two Plans of which Imperial Oil is the Administrator.

The stated reasons for the proposed refusal include the failure of each Wind Up Report to do the following: (a) reflect the liabilities associated with all of the members of the Plan whose employment was terminated by Imperial Oil during the wind up period; (b) apply the grow-in provisions of section 74 of the *Pension Benefits Act* in a proper manner; (c) provide benefits in accordance with elections made, as required under subsection 72(1) of the *Pension Benefits Act*, among various options including those available as a result of partial wind up; and (d) provide for the distribution of assets related to the partial wind up group.

A pre-hearing conference was held on June 19, 2001. At the pre-hearing conference, the Superintendent agreed to amend the Notice of Proposal in this matter to delete reference to (d) above.

A hearing and preliminary motion with respect to answers to interrogatories was held on July 25, 2001. The Tribunal ordered the Superinten-dent to respond to the first and second set of the Applicant's interrogatories within six weeks of the date of the order subject to the qualification that the Superintendent need not produce any documents or reveal any communications to which the law of privilege applies. Written Reasons for Order dated September 10, 2001, were published in Volume 11, Issue 1 of the Pension Bulletin.

A continuation of the pre-hearing conference was held on December 20, 2001. The pre-hearing conference was adjourned to allow the parties to bring motions with respect to answers to interrogatories. On July 24, 2002, the Tribunal heard two motions. The Applicant's notice of motion dated June 7, 2002, asked for an order of the Tribunal directing the Superintendent to provide further and better answers to some of its interrogatories. The Tribunal made an order directing the Superintendent to respond to certain of the interrogatories but with some modifications. Reasons for Order dated September 11, 2002, were published in Volume 12, Issue 1 of the Pension Bulletin. The time for the Super-intendent's response under this Order was extended by Consent Order dated October 22, 2002.

The Superintendent's notice of motion dated June 5, 2002, asked for an order of the Tribunal directing the Applicant to answer those interrogatories it had served on the Applicant on October 11, 2001, that remained outstanding. The Tribunal made an order directing the Applicant to respond to certain of the interrogatories but with some modifications. The Reasons for Order dated September 20, 2002, were published in Volume 12, Issue 1 of the Pension Bulletin.

The pre-hearing conference scheduled to resume on December 18, 2002, was rescheduled to February 27, 2003, and was further adjourned to April 28, 2003, at the request of the parties, due to ongoing settlement discussions.

Marshall-Barwick (formerly Marshall Steel Limited), Registration Number 0968081, FST File Number P150-2001;

On January 16, 2001, Marshall-Barwick Inc. (formerly Marshall Steel Limited) requested a hearing in respect of the Superintendent's Notice of Proposal dated December 12, 2000. The Superintendent is proposing to refuse to approve a Partial Wind Up Report (the "Report") as at August 28, 1992, respecting the Retirement Plan for Salaried Employees of Marshall Steel Limited and Associated Companies in relation to employees who ceased to be employed by Marshall Steel Limited as a result of the closure of its plant in Milton, Ontario. The Superintendent's basis for the Notice of Proposal is that the Report does not protect the interests of all those affected by the partial wind up, specifically Mr. Jeffrey G. Marshall, an employee who was terminated during the wind up period. On June 4, 2001, Jeffrey G. Marshall applied for party status.

A pre-hearing conference was held on August 13, 2001, at which time Mr. Marshall was granted full party status. The hearing scheduled for November 29 and 30, 2001, was adjourned as a result of a joint request made by the parties on November 6, 2001. The reason for the request was due to the applicant providing Mr. Marshall with actuarial data in respect of Mr. Marshall's benefit entitlements. Mr. Marshall required additional time to obtain expert advice in respect of the information. The hearing was held on September 9, 2002. In its Reasons dated November 29, 2002, the Tribunal affirmed the Superintendent's Notice of Proposal and directed the company as administrator to file a revised Partial Wind Up Report that includes Mr. Marshall in the partial wind up group. The Reasons for Decision dated November 29, 2002, are published in this bulletin on page 128.

The Applicant filed a notice of appeal dated December 20, 2002, with the Divisional Court of the Tribunal's Order dated November 29, 2002.

On December 30, 2002, Mr. Marshall filed submissions requesting that the Tribunal award his costs to be paid by the Applicant. The decision is reserved.

Consumers Packaging Inc., Pension Plan II, Registration Number 0998682, FST File Number P162-2001;

On May 17, 2001, Consumers Packaging Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated April 20, 2001, to Refuse to Approve a Partial Wind Up Report filed by Consumers Packaging Inc. on May 19, 2000, with respect to a partial wind up of the Consumers Packaging Inc. Pension Plan II, Registration Number 0998682, as at May 7, 1997, and to Refuse to Register an Amendment to such Pension Plan filed by Consumers Packaging Inc. on May 19, 2000, titled Amendment # 2.

The basis for the Notice of Proposal was that Consumers Packaging Inc. filed a Partial Wind Up Report (the "Report") in 1997. The Superintendent issued two Notices of Proposal in 1999 ordering Consumers Packaging Inc. to accept as members of the Plan certain replacement call-in employees and refusing to approve the 1997 Partial Wind Up Report (the "Report")on the grounds that the replacement call-in employees were not included in the Report and that "grow-in" to plant closure benefits was not provided to unionized hourly employees affected by the partial wind up. Consumers Packaging Inc. requested a hearing before the Financial Services Tribunal with respect to both Notices of Proposal. The hearing concerning the call-in employees was settled by the parties and Consumers Packaging Inc. accepted as members of the Plan those replace-

ment call-in employees who met certain conditions. The hearing request regarding the "grow-in" benefits was withdrawn. Consumers Packaging Inc. was ordered to file an amended Partial Wind Up Report. In addition, in 1997, Consumers Packaging filed an application to register Amendment # 2 to the Plan which provided enhanced bridge benefits to some members.

On May 19, 2000, Consumers Packaging filed a revised Partial Wind Up Report (the "revised Report") and a revised application to register Amendment #2 (the "revised Amendment"). The Superintendent issued the April 20, 2001 Notice of Proposal stating reasons that the revised Amendment is void pursuant to clause 14(1)(c) of the *Pension Benefits Act*, and that the revised Report does not meet the requirements of the *Pension Benefits Act*, pursuant to subsection 70(5), because the commuted value of the pension benefits and ancillary benefits for the affected members is calculated based on the revised Amendment, which is void under the Act. The revised Report does not protect the interests of the members and former members of the Plan for the same reason.

The Superior Court of Justice, Commercial List, issued an Order, dated May 23, 2001, stating that any suit, action, enforcement process, extra-judicial proceeding, regulatory, administrative or other proceeding against or in respect of Consumers Packaging Inc. already commenced be stayed and suspended until and including June 22, 2001. A further Order was issued on June 18, 2001, extending the stay period until August 15, 2001 and again until October 1, 2001. On October 1, 2001, a Pension Assumption Agreement was made. A pre-hearing conference was held on February 19, 2002.

A motion brought by Consumers Packaging for an order compelling the Superintendent to answer certain interrogatories was heard on April 18, 2002, at which time the motion was dismissed. The hearing was held on July 29 and 31, 2002. In its Reasons dated November 29, 2002, the Tribunal directed the Superintendent to carry out the Notice of Proposal dated April 20, 2001, after having found the 1997 Plan Amendment establishing the Enhanced Bridge to be valid, effective and binding upon the Company (the Enhanced Bridge forming part of the Plan). The Reasons for Decision dated November 29, 2002, are published in this bulletin on page 118.

CBS Canada Co., Westinghouse Canada Inc. Pension Plan, Registration Numbers 348409 and 526632, FST File Number P164-2001;

On June 8, 2001, CBS Canada Co., the successor to Westinghouse Canada Inc., requested hearings in connection with the Superintendent's Notices of Proposal dated May 9 and 15, 2001, to Refuse to Approve various Partial Wind Up Reports in respect of the Salaried Employees Pension Plan and the Hourly Paid Employees Pension Plan of Westinghouse Canada Inc. The partial wind ups were triggered by the closure by ABB Canada Inc. of its plants in London, Ontario; St. Jean, Quebec; and Burlington, Ontario, at which it carried on businesses acquired from Westinghouse Canada Inc., and by the closure by Westinghouse Canada Inc. of its Motors Division plant in Hamilton, Ontario.

The basis for each Notice of Proposal was that the relevant Partial Wind Up Report failed to provide employer request early retirement benefits and related bridge benefits, contemplated by each Plan, to all members of the partial wind up group whose age plus years of service equaled at least 55 and because the Report failed to provide for the distribution of surplus relating to the partial wind up group.

On June 19, 2001, CAW Canada, which represented the employees who were members of the Westinghouse Hourly Paid Employees Pension Plan, filed an application for party status in these proceedings. At a pre-hearing conference on November 5, 2001, CAW Canada was granted party status in the proceedings concerning the Notices of Proposal relating to the Hourly Employees Pension Plan and was given limited rights to participate in the proceedings concerning the Notices of Proposal relating to the Salaried Employees Pension Plan. The various proceedings were directed to be heard together.

At a continuation of the pre-hearing conference, held on November 29, 2001, a hearing was scheduled for February 4-5, 2002, to deal with several jurisdictional issues to be brought on by motion of CBS Canada Co. Those issues included the following:

1. whether the Superintendent was entitled to rescind the initial approvals that she had given with respect to several of the Partial Wind Up Reports, for failure to adhere to the doctrine of fairness, and for which she subsequently substituted Notices of Proposal to refuse approval;
2. whether the Tribunal could direct the Superintendent to refuse approval of certain of the Wind Up Reports on the basis of a ground that was not specifically recited in the relevant Notices of Proposal;
3. whether the Tribunal could determine the responsibility for any special benefits payable to the former Westinghouse employees at the facilities that were closed by ABB Inc. as between CBS Canada Co. and ABB Inc.; and
4. whether the Tribunal could order that ABB Inc. be added as a party to the proceedings against its will.

At the hearing on the jurisdictional motion, the Tribunal refused to order that ABB Inc. be added as a party, but otherwise reserved its determination of the issues raised by the motion. Reasons for Decision on the jurisdictional motion dated March 4, 2002 were published in Volume 11, Issue 3 of the Pension Bulletin.

The Applicant filed a notice of appeal dated April 3, 2002, with the Divisional Court of the Tribunal's Order dated March 4, 2002.

A settlement conference was held on August 7-8, 2002. On October 4, 2002, a motion hearing was held with respect to the Applicant's notice of motion dated September 25, 2002, asking for an order that the CAW respond to the Applicant's interrogatories dated September 25, 2002. At the motion hearing the parties agreed that the motion could be dealt with by way of a consent order and such an order was subsequently issued.

On November 21, 2002, the December hearing dates were adjourned at the request of the parties except for December 5, 2002, pending settlement discussions between the parties. On December 5, 2002, the matter resumed as a pre-hearing conference and new hearing dates were set. The hearing is scheduled for March 31, 2003, April 1-3, 2003 and May 6-8, 2003.

Crown Cork & Seal Canada Inc., Registration Numbers 474205, 595371 & 338491, FST File Number P0165-2001;

On June 29, 2001, Crown Cork & Seal Canada Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated May 29, 2001, to refuse to consent to a transfer of assets proposed by Crown Cork & Seal Canada Inc. from the Crown Cork & Seal Canada Inc. Pension Plan for Salaried Employees, Registration Number 0474205, and the Pension Plan for Clerical Employees of Crown Cork &

Seal Canada Inc., Registration Number 0595371, into the Crown Cork & Seal Canada Inc. Pension Plan for Employees, Registration Number 338491. The basis for the refusal is that the asset transfer does not protect the pension benefits and other benefits of the members and former members of the Plans.

At the request of both parties a settlement conference was held on October 30, 2001, prior to the scheduling of a pre-hearing conference. At the settlement conference the parties agreed to adjourn the matter *sine die* pending discussions between the parties.

On February 11, 2003, counsel for the Superintendent requested a pre-hearing conference be scheduled as the parties have been unable to resolve the issues in this matter.

The pre-hearing conference date is scheduled for May 12, 2003.

Stanley Canada Inc., Pension Plan for Designated Employees of Stanley Canada Inc., Registration Number 456897, FST File Number P0170-2001;

On August 27, 2001, Stanley Canada Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated July 26, 2001, to refuse to consent to the application for payment of surplus to the Employer dated April 1999, pursuant to section 78(1) of the *Pension Benefits Act*.

An Application for Party Status was filed on November 20, 2001, by Mr. Blaine Mitton, a Member of the Plan.

The pre-hearing conference scheduled for November 28, 2001 was rescheduled to January 10, 2002, at which time Mr. Mitton was granted party status. On January 11, 2002, an Application for Party Status was filed by Mr. Edward Holba, a Member of the Plan. The parties consented to Mr. Holba's Application for Party Status and full party status was granted by Order dated April 4, 2002. The May 2002 hearing dates were adjourned at the request of the parties for a motion to be brought by the Superintendent concerning expert evidence. The motion was heard on May 22, 2002. At the hearing on November 19, 2002, the terms of settlement between Stanley Canada and the Superintendent were made an Order of the Tribunal. The Order is published in this bulletin on page 112.

The Corporation of the City of Kitchener Pension Plan for Fire Department Employees, Registration Number 239475, FST File Number P0172-2001;

On September 20, 2001, The Corporation of the City of Kitchener requested a hearing regarding the Superintendent's Notice of Proposal dated August 23, 2001, to refuse to consent to the application for payment of surplus to the employer, pursuant to section 78(1) of the *Pension Benefits Act*, from The City of Kitchener Pension Plan for Fire Department Employees, Registration No. 239475.

A pre-hearing conference was held on April 25, 2002, at which time the parties agreed to a settlement conference. The settlement conference date of July 16, 2002 was rescheduled at the parties' request and was held on September 4, 2002. At the settlement conference the matter was adjourned *sine die*.

On February 7, 2003, counsel for the Superintendent requested the pre-hearing conference be reconvened. The pre-hearing conference date is scheduled for April 17, 2003.

Retirement Pension Plan for Employees of Twin Oak Credit Union Ltd., Registration Number 284257, FST File Number P0178-2002;

On January 11, 2002, Twin Oak Credit Union Ltd. requested a hearing regarding the Superintendent's Notice of Proposal dated December 13, 2001, proposing to make an order under section 87 of the *Pension Benefits Act*, with respect to Carol Joseph and any other part-time employee eligible for membership in the Plan. The Superintendent has proposed that the administrator of the Plan pay to Ms. Joseph her pension benefit determined on the basis that Ms. Joseph was eligible for membership and should have been enrolled in the Plan effective January 1, 1978. The Superintendent also proposed to order the administrator to provide, to any other part-time employee who was eligible to participate in the Plan, the monthly pension benefit determined on the basis that the part time employee was eligible for membership and should have been enrolled in the Plan effective January 1, 1978 or later if employed at a later date. The Superintendent also proposed that any lump sum owing to Ms. Joseph or any other eligible part-time employee representing retroactive payments shall also be credited with interest payable pursuant to subsection 21(11) of Regulation 909 made under the Act. Applications for Party Status were filed by Carol Lynne Joseph, Mary Lynn Feenan, Sharon Wiese, Donna Fredricks and Wendy Edmunds.

At the pre-hearing conference on April 24, 2002, full party status was granted to Ms. Joseph, Ms. Feenan, Ms. Wiese and Ms. Fredricks. Party status was not granted to Ms. Edmunds.

The parties agreed to a settlement conference which was held on June 4, 2002. The parties also agreed that a preliminary motion will be brought to decide whether or not the Tribunal has the jurisdiction to deal with the proposed issue of whether or not the employer is entitled to a credit for payments made in lieu of benefits to part-time employees under collective agreements during the period January 1, 1978 to January 1, 1988 and whether the *Limitations Act* bars this proceeding. The Motion scheduled for November 6, 2002, did not proceed at the request of the parties as settlement discussions are ongoing. The hearing is scheduled for February 24, 26-28, 2003 and March 26-28, 2003. Hearing dates were adjourned except February 27-28, 2003, at the request of the applicant, pending further settlement discussions. On February 25, 2003, the matter settled.

Marcel Brousseau, Electrical Industry of Ottawa Pension Plan, Registration Number 0586396, FST File Number P0183-2002;

On February 20, 2002, Marcel Brousseau a member of the Plan, requested a hearing regarding the Superintendent's Notice of Proposal dated January 22, 2002, to refuse to make an order in respect of the Plan Administrator's determination pursuant to section 87 of the *Pension Benefits Act*, of Mr. Brousseau's pensionable service under the terms of the Plan.

A pre-hearing conference was held on August 27, 2002. At the pre-hearing conference, the Superintendent raised a jurisdictional issue. The parties agreed that the issue on the motion will be, "Given the November 19, 2001 decision of the Superior Court of Justice in Court File No. 01-CV-18268, does the Tribunal have jurisdiction to proceed in the circumstances of this case?". The motion was heard on November 29, 2002. The decision is reserved.

Kerry (Canada) Inc., Pension Plan for the Employees of Kerry (Canada) Inc., Registration Number 238915, FST File Number P0191-2002;

On May 22, 2002, Kerry (Canada) Inc., requested a hearing regarding the Superintendent's Notice of Proposal dated April 22, 2002, proposing to make an order that Kerry (Canada) Inc.:

- reimburse the pension fund (the "Fund") of the Plan for all amounts paid out of the Fund from January 1, 1985 for expenses that were not incurred for the exclusive benefit of the members and retired members of the Plan;
- reimburse the Fund for all income that would have been earned by the Fund if those expenses had not been paid from the Fund; and
- amend the Plan and the trust (the "Trust") in respect of the Fund so that the provisions of the Plan and the Trust relating to the deduction of expenses from the Fund are consistent with the 1954 versions of the Plan and the Trust.

On June 10, 2002, an application for party status was filed by Elaine Nolan, George Phillips, Elisabeth Ruccia, Kenneth R. Fuller, Paul Carter, R. A. Varney and Bill Fitz, being the members of the DCA Employees Pension Committee.

At the pre-hearing conference on October 15, 2002, full party status was granted to the individuals comprising the DCA Employees Pension Committee, representing the members and retired members of the Plan, and it was agreed that the hearing in this matter would be held together with the hearing in P0192-2002. The pre-hearing conference was adjourned to allow the parties to bring certain motions with respect to disclosure. At the motion hearing on December 6, 2002, an order for disclosure was issued against Kerry (Canada) Inc.

On January 22, 2003, the pre-hearing conference resumed and was further adjourned to allow a further disclosure motion to be brought by the DCA Employees Pension Committee. The motion was heard on March 27, 2003, at which time it was dismissed.

Elaine Nolan, George Phillips, Elisabeth Ruccia, Kenneth R. Fuller, Paul Carter, R.A. Varney and Bill Fitz being the members of the DCA Employees Pension Committee, Pension Plan for the Employees of Kerry (Canada) Inc., Registration Number 238915, FST File Number P0192-2002;

On May 27, 2002, William Fitz on behalf of the DCA Employees Pension Committee, requested a hearing regarding the Superintendent's Notice of Proposal, dated April 22, 2002, proposing to refuse to make an order that:

- the Plan be wound up, effective December 31, 1994;
- Kerry (Canada) Inc. pay to the pension fund (the "Fund") of the Plan all employer contributions for which a contribution holiday was taken since January 1, 1985, together with income that would have been earned by the Fund if those contributions had been made; and
- registration of the Revised and Restated Plan Text dated January 1, 2000, and all amendments to the Plan included therein, be refused.

On June 5, 2002, an application for party status was filed by Kerry (Canada) Inc.

At the pre-hearing conference on October 15, 2002, full party status was granted to Kerry (Canada) Inc., and it was agreed that the hearing in this matter would be held together with the hearing in P0191-2002. The pre-hearing

conference was adjourned to allow the parties to bring certain motions with respect to disclosure. At the motion hearing on December 6, 2002, three orders for disclosure were issued, one against Kerry (Canada) Inc., one against the DCA Employees Committee and one against the Superintendent.

On January 22, 2003, the pre-hearing conference resumed and was further adjourned to allow a further disclosure motion to be brought by the DCA Employees Pension Committee. The motion was heard on march 27, 2003, at which time it was dismissed.

Robert Kerschbaumer

(AFG Industries Ltd. Salaried Pension Plan, Registration Number 1070853), FST File Number P0197-2002;

On September 4, 2002, Robert Kerschbaumer, requested a hearing regarding the Superintendent's Notice of Proposal dated August 2, 2002, to make an order under subsection 78(1) of the *Pension Benefits Act*, consenting to a payment out of AFG Industries Ltd., Salaried Pension Plan, Registration Number 1070853.

Applications for party status were filed by AFG Industries Ltd. on October 11, 2002, and AFG Committee Members on October 15, 2002.

A pre-hearing conference was scheduled for February 10, 2003. On November 22, 2002, the request for hearing was withdrawn.

Alan Bishop

(Contributory Pension Plan for Salaried Employees of McMaster University Including McMaster Divinity College 2000, Registration Number 1079920), FST File Number P0198-2002;

On October 23, 2002, Alan Bishop requested a hearing regarding the Superintendent's Notice of Proposal dated September 27, 2002, to make an order under subsection 78(1) of the *Pension Benefits Act*, consenting to a payment out of the Contributory Pension Plan for Salaried Employees of McMaster University Including McMaster Divinity College 2000, Registration Number 1079920.

Applications for party status were filed by McMaster University on October 31, 2002, and Some Members and Former Members of the Contributory Pension Plan for Salaried Employees of McMaster University including McMaster Divinity College 2000, on November 19, 2002. On November 8, 2002 an application for party status was filed by Lynda Fay, but was subsequently withdrawn on November 19, 2002.

A pre-hearing conference was scheduled for January 20, 2003. On December 24, 2002, the request for hearing was withdrawn.

Slater Steel Inc. Pension Plan for Corporate Employees and Salaried Employees of the Hamilton Specialty Bar Division, Registration Number 308338, FST File Number P0203-2002

On October 31, 2002, Slater Steel Inc. requested a hearing regarding the Superintendent's Notice of Proposal dated September 27, 2002, to make an order under section 69(1)(d) of the *Pension Benefits Act*, that the Plan be wound up in part in relation to those members and former members of the Plan who ceased to be employed by Slater Steel Inc. effective from March 13, 1998 to January 26, 2000, as a result of the reorganization of the business of Slater Steel.

On November 7, 2002, an application for party status was filed by John Hughes.

At the pre-hearing conference on February 11, 2003, full party status was granted to John Hughes. At the pre-hearing conference, Slater Steel Inc. and the Superintendent indicated that

they would be bringing motions with respect to disclosure. The motions are scheduled for May 14, 2003. Hearing dates are scheduled for October 8-10, 15-16, 2003 and December 4-5, 2003.

George Polygenis, Public Service Pension Plan, Registration Number 0208777, FST File Number P0204-2002

On November 12, 2002, George Polygenis requested a hearing regarding the Superintendent's Notice of Proposal dated October 11, 2002, to refuse to make an order, under section 87(1) of the Act, that the Pension Policy Committee of the Ontario Pension Board reconsider its decision denying a disability pension to the Applicant under section 14(1) of the Public Service Pension Plan.

On November 26, 2002, an application for party status was filed by the Ontario Pension Board.

At a pre-hearing conference on January 27, 2003, full party status was granted to the Ontario Pension Board, and the parties agreed to a settlement conference. The settlement conference was held on February 10, 2003 and is to continue at some future date with the participation of Mr. Polygenis' employer as well as the expected parties.

It was determined at the pre-hearing conference that a preliminary motion will be heard to determine "What degree of deference should the Tribunal exercise in reviewing the decision of the Board denying the Applicant entitlement to a disability pension"? The motion is scheduled for March 26, 2003. On March 14, 2003, the parties agreed to adjourn the March motion hearing sine die.

The hearing date is scheduled for June 11, 2003.

Barbara Lewis, Retirement Plan for Unionized Employees of Donohue Forest Products Inc., Pulp and Paper Divisions — Thorold Sector, Registration Number 0294496, FST File Number P0207-2002;

On November 18, 2002, Barbara Lewis requested a hearing regarding the Superintendent's Notice of Proposal dated November 8, 2002, to refuse to make an order under section 87(2)(a) and (c) of the Act, requiring Donohue Forest Products Inc. to comply with sections 37(3)(b) and 48(1) of the Act and the terms of the Plan in the calculation of the pre-retirement death benefits payable from the Plan to Barbara Lewis, spouse of the late Harold Lewis.

On February 6, 2003, an application for party status was filed by Abitibi-Consolidated Company of Canada (formerly Donohue Forest Products Inc.).

At the pre-hearing conference on February 21, 2003, full party status was granted to Abitibi-Consolidated Company of Canada. The hearing is scheduled for July 2-4, 2003.

Ontario Teachers' Pension Plan Board, Ontario Teachers' Pension Plan, Registration Number 0345785, FST File Number P0217-2003;

On February 25, 2003, the Ontario Teachers' Pension Plan Board requested a hearing regarding the Superintendent's Notice of Proposal dated January 8, 2003, to make an order under sections 87(2)(a) and (c) of the Act, requiring the administrator of the Plan to pay Ronald A. Wilson, a former Member of the Plan, his pension in the form of a joint and survivor pension in accordance with section 44(1) of the Act.

The pre-hearing conference date is scheduled for May 26, 2003.

The following cases are Adjourned *sine die*

- **Revised Retirement Plan for Employees of the Allen-Bradley Division of Rockwell International of Canada (now the Pension Plan for Employees of Rockwell Automation Canada Inc.), Registration Number 321554 and the Pnesion Plan for Salaried and Management Employees of Reliance Electric Limited, Registration Number 292946, FST File Number P0051-1999;** At a pre-hearing conference on July 6, 1999, the matter was adjourned *sine die*.
- **The Retirement Plan for Salaried Employees (Consumers Foods) of General Mills Canada, Inc., Registration Number 342042, FST File Number P0058-1999;** Matter continues to be adjourned *sine die* pending the outcome of the *Monsanto* case.
- **Gerald Menard (Public Service Pension Plan, Registration Number 208777 and the Ontario Municipal Employees' Retirement System "OMERS", Registration Number 345983), FST File Number P0071-1999;** Matter adjourned *sine die* at a pre-hearing conference on February 21, 2000.
- **Consumers' Gas Ltd., Registration Number 242016, FST File Number P0076-1999;** At the pre-hearing conference on June 27, 2000, the matter was adjourned *sine die* pending the outcome of the *Monsanto* case.
- **Schering-Plough Healthcare Products Canada Inc. Salaried Employees' Pension Plan, Registration Number 297903, FST File Number P0085-1999;** Matter was adjourned *sine die* pending the outcome of the *Monsanto* case.
- **Eaton Yale Limited Pension Plan for Salaried Employees of Cutler-Hammer Canada Operations, Registration Number 440396, FST File Number P0117-2000;** At the request of the parties, this matter was adjourned *sine die* pending the outcome of the *Monsanto* case.
- **Cooper Industries (Canada) Inc., Registration Number 0240622, FST File Number P156-2001;** The pre-hearing conference for May 27, 2002 was adjourned to a date to be set at the request of the parties, pending the outcome of the *Monsanto* case.
- **Pension Plan for the Employees of Dyment Limited, Registration Number 0242735, FST File Number P0157-2001;** The April 15 and 16, 2002 hearing dates were adjourned at the parties' request so that settlement discussions may continue.
- **James MacKinnon (Labourers' Pension Fund of Central and Eastern Canada), Registration Number 573188, FST File Number P0167-2001;** On July 10, 2002, the hearing dates were adjourned *sine die* on consent of the parties.
- **Canadian Tack & Nail Ltd. Pension Plan for Salaried Employees, Registration Number 0581306, FST File Number P0171-2001;** At a settlement conference on June 27, 2002, the parties reached agreement and agreed to adjourn the hearing *sine die*. Any breach in the terms of the settlement gives the parties the right to ask that the pre-hearing conference be rescheduled.

- **Molson Canada, Molson Breweries Pension Plan for Operating Engineers, Registration Number 0390666; Molson Canada Pension Plan for Hourly Employees in Ontario and Atlantic Canada, Registration Number 0334094; and Molson Canada Pension Plan for Salaried Employees, Registration Number 0334086, FST File Number P0187-2002;** The pre-hearing conference scheduled for October 28, 2002, was adjourned *sine die* on consent of the parties.
- **Donna Marie Sloan, Ontario Teachers' Pension Plan, Registration Number 0345785, FST File Number P0188-2002;** The pre-hearing conference scheduled for August 20, 2002 was adjourned *sine die* on consent, pending settlement discussions between the parties.
- **Bauer Nike Hockey Inc. Pension Plan for Employees of Bauer Nike Hockey Inc., Registration Number 257337, FST File Number P0189-2002;** At the pre-hearing conference on October 28, 2002, the matter was adjourned *sine die* pending the outcome of the *Monsanto* case.

Financial Hardship

Application to the Superintendent of Financial Services for Consent to Withdraw Money from a Locked-in Retirement Account, Life Income Fund or Locked-in Retirement Income Fund based on Financial Hardship.

FST File Number	Superintendent of Financial Services' Notice of Proposal	Comments
U0200-2002	To Refuse to Consent, dated September 23, 2002	Reasons for Decision dated December 23, 2002
U0202-2002	To Refuse to Consent dated October 7, 2002	Reasons for Decision dated November 28, 2002
U0205-2002	To Refuse to Consent dated October 7, 2002	Reasons for Decision dated December 20, 2002
U0206-2002	To Refuse to Consent dated October 21, 2002	Reasons for Decision dated December 17, 2002
U0208-2002	To Refuse to Consent dated October 21, 2002	Withdrawn December 2, 2002
U0209-2002	To Refuse to Consent dated October 21, 2002	Reasons for Decision dated December 20, 2002
U0211-2003	To Refuse to Consent dated January 6, 2003	Reasons for Decision dated February 19, 2003
U0212-2003	To Refuse to Consent dated January 6, 2003	Reasons for Decision dated March 10, 2003
U0213-2003	To Refuse to Consent dated January 20, 2003	Reasons for Decision dated March 24, 2003
U0214-2003	To Refuse to Consent dated December 20, 2002	Reasons for Decision dated March 24, 2003
U0215-2003	To Refuse to Consent dated January 20, 2003	Reasons for Decision dated March 5, 2003
U0216-2003	To Refuse to Consent dated January 20, 2003	Reasons for Decision dated March 18, 2003
U0219-2003	To Refuse to Consent dated January 20, 2003	WITHDRAWN March 5, 2003

Decisions to be Published

Consumers Packaging Inc.	Marshall-Barwick	Stanley Canada Inc.
U0200-2002 Reasons	U0202-2002 Reasons	U0205-2002 Reasons
U0206-2002 Reasons	U0209-2002 Reasons	U0211-2002 Reasons
U0212-2003 Reasons	U0213-2003 Reasons	U0214-2003 Reasons
U0215-2003 Reasons	U0216-2003 Reasons	

Financial Services Tribunal Decisions with Reasons

INDEX NO.:	FST File Number P0170-2001
PLAN:	Pension Plan for Designated Employees of Stanley Canada Inc., Registration No. 456897 (the "Plan")
DATE OF DECISION:	November 19, 2002
PUBLISHED:	Bulletin 12/2 and FSCO web site

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services (the "Superintendent") to Refuse to Consent to the Application for payment of surplus to the Employer submitted by Stanley Canada Inc. in respect of the **Pension Plan for Designated Employees of Stanley Canada Inc., Registration No. 456897 (the "Plan");**

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the Act.

BETWEEN:

STANLEY CANADA INC.

Applicant

- and -

SUPERINTENDENT OF FINANCIAL SERVICES

Respondent

BEFORE:

Martha Milczynski
Chair of the Tribunal

Kathryn Bush
Vice-Chair of the Tribunal

David Short
Member of the Tribunal

APPEARANCES:

For the Applicant:

Freya Kristjanson

Barry Glaspell

For the Superintendent of Financial Services:

Deborah McPhail

For the Members Ed Holba and Blaine Mitton:

Robert Forsyth Q.C. (via teleconference)

HEARING HELD:

November 19, 2002
Toronto, Ontario

ORDER

On the basis of the pleadings and written submissions filed, the Minutes of Settlement dated October 24, 2002, attached hereto as Annex "A" containing the Consent to the Order herein filed, and on hearing the oral submissions by counsel for the Superintendent, the Applicant and the Represented Members, the Tribunal makes the following Order:

1. That the Superintendent is directed to refrain from carrying out the Notice of

Proposal to Refuse to Consent to the payment of surplus to the Applicant dated July 26, 2001; and

2. We direct the payment of the surplus to the Applicant, subject to the interest payments referred to in paragraph 1(e) of the Minutes of Settlement, in accordance with the terms and provisions of the Surplus Distribution Agreement.

DATED at Toronto, Ontario, this 19th day of November, 2002.

Martha Milczynski,
Chair of the Tribunal and
Member of the Panel

Kathryn Bush,
Vice-Chair of the Tribunal and
Chair of the Panel

David Short,
Member of the Tribunal and of the Panel

FINANCIAL SERVICES TRIBUNAL: FST File No.: P0170-2001

ANNEX "A"

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services (the "Superintendent") to Refuse to Consent to the Application for payment of surplus to the Employer submitted by Stanley Canada Inc. in respect of **The Pension Plan for Designated Employees of Stanley Canada Inc., Registration No. 456897 (the "Plan");**

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the Act.

BETWEEN:

STANLEY CANADA, INC.

Applicant

- and -

SUPERINTENDENT OF FINANCIAL SERVICES

Respondent

MINUTES OF SETTLEMENT:

(Dated October 24, 2002)

WHEREAS the Pension Plan for Designated Employees of Acmetrack Limited (the "Plan"), a defined benefit pension plan, is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8 ("PBA") as Registration No. 456897 and with the Canada Customs and Revenue Agency under the *Income Tax Act*, R.S.C. 1985 (5th Supp.), c. 1 as am. ("ITA") and is administered by Stanley Canada, Inc. (the "Applicant");

AND WHEREAS the Plan was terminated and wound up effective December 31, 1993;

AND WHEREAS the Report on the Wind Up of the Pension Plan for Designated Employees of Acmetrack Limited as of December 31, 1993, indicated that there were surplus assets of approximately $1,013,748.00 after provision of Plan benefits;

AND WHEREAS the Superintendent approved distribution of the Plan benefits to the three members of the Plan ("Members") by letter dated March 21, 1997;

AND WHEREAS the Members, who constituted all the members, former members and other persons entitled to Plan benefits as at December 31, 1993, entered the Surplus Distribution Agreement ("SDA") on September 16, 1998 which is attached hereto as Annex "A;"

AND WHEREAS the Applicant applied to the Superintendent of Financial Services for Consent to the distribution of surplus from the Plan in accordance with the Surplus Distribution Agreement in April 1999 (the "Application");

AND WHEREAS the Deputy Superintendent gave a Notice of Proposal to Refuse to Consent to the Application dated July 26, 2001;

AND WHEREAS the Applicant requested a Hearing pursuant to PBA s. 89(6) on August 21, 2001;

AND WHEREAS Members Ed Holba and Blaine Mitton (the "Represented Members") obtained standing as Parties to the Hearing by Order of the Financial Services Tribunal ("Tribunal") and retained Robert Forsyth Q.C. as counsel, the third Member Robert T. Spicer not appearing or obtaining standing after having been duly served with the Notice of Hearing;

AND WHEREAS the Hearing by the Tribunal is scheduled to commence on November 19, 2002;

AND WHEREAS the Applicant, the Superintendent, and the Represented Members (collectively the "Parties"), at a Settlement Conference, have reached agreement settling all issues between the Parties ("Settlement Agreement"), subject to approval by the Tribunal, and the Parties wish to record the terms of the Settlement Agreement herein:

1. The Parties agree that:
   a. amounts transferred from the Pension Plan for the Employees of Acmetrack Limited (the "Acmetrack Plan") and the Deferred Profit Sharing Plan for Employees of Acmetrack Limited (the "DPSP") to the Plan did not remain subject to the provisions or trusts applicable to the Acmetrack Plan and the DPSP;
   b. within the meaning of paragraph 79(3)(b) of the Act, the Plan provides for payment of surplus to the Applicant on the wind up of the Plan;
   c. the Applicant's Application to withdraw surplus in accordance with the Surplus Distribution Agreement attached hereto as Annex "A" complies with subsection 78(2) of the Act and clause 8(1)(b) of Regulation 909, R.R.O. 1990;
   d. the Applicant's withdrawal of surplus from the Plan and payment of surplus to the Applicant in accordance with the terms and provisions of the Surplus Distribution Agreement are lawful and permissible under the terms of the Plan, any trust applicable to the Plan, and the Act and Regulations thereunder;
   e. interest on the surplus payments to the Members pursuant to the Surplus Distribution Agreement shall be paid in accordance with the Plan fund rate of return from the date of Plan wind up to the date of payment;
   f. subject to the interest payments referred to in paragraph 1(e) hereof, the Applicant is and shall be entitled to withdraw surplus from the Plan in accordance with the terms and provisions of the Surplus Distribution Agreement.
2. The Parties consent to an Order by the Tribunal in the form attached hereto as Annex "B."
3. The Parties shall each bear their own costs.
4. The Represented Members shall execute and provide to the Applicant a Full and Final Release in the form attached as Annex "C" hereto.
5. The Parties agree to cooperate to put these Minutes of Settlement into effect and to take such steps as may be necessary to complete this Settlement Agreement.

DATED at Toronto this 24th day of October, 2002.

Lynda Ellis,
Manager Technical Consulting,
Pension Plans Branch
Financial Services Commission of Ontario
on behalf of the Superintendent,
Financial Services Commission of Ontario

Freya Kristjanson,
of Borden Ladner Gervais LLP,
on behalf of the Applicant

Robert Forsyth Q.C.,
on behalf of the Members Ed Holba and Blaine Mitton

INDEX NO.: FST File Number U0202-2002

DATE OF DECISION: November 28, 2002

PUBLISHED: Bulletin 12/2 and FSCO web site

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated October 7, 2002, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

AND IN THE MATTER OF a Hearing under subsection 89(8) of the Act;

REASONS:

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated October 7, 2002, denying the Applicant access to funds associated with a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:

   67.–(5) Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that this application (the "August 2002 Application"), which was made on the basis of low income, was made within 12 months after the date of a previous successful application (the "December 2001 Application") made on the basis of low income, contrary to the conditions imposed by subsections 89(4) and 89(5) of Ontario Regulation 909 as amended (the "Regulation"), as follows:

   89.–(4) Only one application may be made during each 12-month period.

   (5) An unsuccessful application is not counted for the purposes of subsection (4).

3. The issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the August 2002 Application.

4. The Superintendent submits that the December 2001 Application was signed by the Applicant on December 10, 2001. On December 13, 2001, the Superintendent consented to withdrawal of funds from the Applicant's locked-in account, on the basis of the Applicant's low income. Therefore, the December 2001 Application was successful.

5. On August 20, 2002, the Applicant signed the August 2002 Application, in which he applied to withdraw funds from his locked-in account on the basis of low income. As this application was made within 12 months after the successful December 2001 Application, which was also made on the basis of low income, the August 2002

Application does not meet the conditions set out in subsections 89(4) and 89(5) of the Regulation.

6. This Tribunal does not have the authority to direct the Superintendent to allow an application that does not meet the requirements of the Regulation. Although the evidence of financial hardship on the part of the Applicant may be compelling, the August 2002 Application cannot be granted because it fails to meet one of those requirements. In the circumstances, the Tribunal must affirm the Superintendent's Notice dated October 7, 2002, in respect of the August 2002 Application.
7. **However, as of December 10, 2002, 12 months will have passed since the date of the successful December 2001 Application, with the result that a further application for withdrawal of locked-in funds can then be made to the Superintendent. If the circumstances of the Applicant are such that he wishes to do so, a new application can be submitted to the Superintendent on or after December 10, 2002.**

ORDER

The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated October 7, 2002, directed to the Applicant.

DATED at Toronto, this 28th day of November, 2002.

Mr. C. S. Moore,
Member, Financial Services Tribunal

INDEX NO.:	FST File Number P162-2001
PLAN:	O-I Canada Corp. Pension Plan (formerly called the "Consumers Packaging Inc. Pension Plan II"), Registration No. 0998682 (the "Plan")
DATE OF DECISION:	November 29, 2002
PUBLISHED:	Bulletin 12/2 and FSCO web site

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the *Pension Benefits Act*, R. S. O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, c. 28 (the "Act");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to refuse to approve a partial wind up report filed by Consumers Packaging Inc. on May 19, 2000, with respect to a partial wind up of the **O-I Canada Corp. Pension Plan (formerly called the "Consumers Packaging Inc. Pension Plan II"), Registration No. 0998682 (the "Plan")**, as at May 7, 1997, and a proposal to refuse to register an amendment to such pension plan filed by Consumers Packaging Inc. on May 19, 2000, titled Amendment #2;

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the Act;

BETWEEN:

CONSUMERS PACKAGING INC., by its monitor, KPMG INC., On behalf of O-I CANADA CORP.

("the Company")

Applicant

- and -

SUPERINTENDENT OF FINANCIAL SERVICES OF ONTARIO

(the "Superintendent")

Respondent

- and -

UNITED STEELWORKERS OF AMERICA, LOCAL 203G

(the "Union")

Respondent

BEFORE:

Martha Milczynski
Chair of the Tribunal

David Wires
Member of the Tribunal

David Short
Member of the Tribunal

APPEARANCES:

For the Applicant:

Mary Picard
Barbara Grossman

For the Superintendent of Financial Services:

Deborah McPhail

For the United Steel Workers of America, Local 203G:

Michael Mazzuca

HEARING HELD:

July 29 & 31, 2002
Toronto, Ontario

REASONS:

Introduction

Consumers Packaging Inc., by its monitor KPMG Inc., on behalf of O-I Canada Corp. (the "Company"), is the Applicant in this proceeding before the Financial Services Tribunal (the "Tribunal") in respect of the Notice of Proposal dated April 20, 2001 (the "NOP") issued by the Superintendent of Financial Services (the "Superintendent"). O-I Canada Corp. purchased the assets of Consumers Packaging Inc., in August, 2001 — for ease of reference, unless the context requires otherwise, the reference to "Company" shall include both O-I Corp. and Consumers Packaging.

The Company is the administrator of the Consumers Packaging Inc. Pension Plan II (the "Pension Plan" or "Plan") whose hourly paid unionized members were represented by the Respondent, United Steel Workers of America Local 203G (the "Union"). The Superintendent was also a respondent in this hearing.

The NOP set out the Superintendent's refusal to:

a. approve the partial wind up report filed by the Company on May 19, 2000 (the "2000 Report"); and

b. register an amendment to the Pension Plan dated May 18, 2000 (the "2000 Plan Amendment").

The 2000 Report and 2000 Plan Amendment were prepared and filed with respect to the partial wind up of the Pension Plan effective May 7, 1997, due to the Company's closure of its plant in Hamilton, Ontario.

At issue is whether the 2000 Plan Amendment is a permitted amendment under the *Pension Benefits Act* ("PBA" or "Act") or is void due to a plan amendment filed by the Company in 1997 that enhanced certain (ancillary) bridge benefits (the "1997 Plan Amendment") which the 2000 Plan Amendment sought to restrict or reduce. The terms of the Plan with either the 1997 or 2000 Plan Amendment will have a corresponding impact on the calculation of liabilities for the purposes of the partial wind up report.

For the reasons set out below, the Tribunal affirms the Superintendent's NOP and finds:

a. the 1997 Plan Amendment that enhanced the early retirement bridge benefit to be valid and effective; and

b. the 2000 Plan Amendment void.

Facts

This proceeding has a rather complicated and lengthy factual history and context. The matter of the partial wind up of the Plan arising out of the May 1997 plant closure in Hamilton, Ontario has been the subject of two earlier Notices of Proposal issued by the Superintendent. These Notices of Proposal, issued on April 30, 1999, addressed certain inadequacies that the Superintendent found with the first partial wind up report the Company filed in respect of this partial wind up (the "1997 Report"). In this respect, the chronology of events and the various filings made by the Company is important:

- Consumers Packaging Inc. ("Consumers") closed its plant in Hamilton, Ontario on or about May 7, 1997.
- Consumers declared a partial wind up of the Pension Plan effective May 7, 1997 in respect of its employees affected by the plant closure.

- On July 16, 1997, Consumers' board of directors passed a resolution adopting an amendment to the Plan with effect to May 7, 1997 to provide certain enhanced bridge benefits to members who had at least 10 years of continuous service as well as 55 points calculated in age and years of service (the "1997 Plan Amendment" providing for the "Enhanced Bridge").

The Company clearly planned ahead and prepared for the plant closure and partial wind up of the Plan in an organized and comprehensive manner:

- The availability of the Enhanced Bridge was communicated to Plan members even before the amendment had been made — in February 1997, Consumers distributed written statements outlining the benefits that would be provided to those affected by the plant closure.
- In April 1997, representatives of Consumers and the Plan actuaries conducted meetings and presentations with Plan members. The presentation material clearly communicated the Enhanced Bridge.
- By letter dated February 28, 1997, to the Pension Commission of Ontario (the "PCO", and effective July 1, 1998 replaced by the Financial Services Commission of Ontario, ("FSCO")), Consumers submitted copies of the notices sent to Plan members in connection with the upcoming partial wind up of the Plan effective May 7, 1997. The correspondence also requested approval under subsection 70 (3) of the PBA for the payment of pension benefits to all eligible members who elected to retire at any time on or after February 1, 1997.
- PCO approval was granted for the payment of pension benefits by letter dated April 15, 1997.
- Benefits commenced being paid out from the Plan that included the Enhanced Bridge.
- By cover letter dated December 22, 1997, the Plan actuaries on behalf of Consumers, filed among other things, a partial wind up report (the "1997 Report") and a copy of the 1997 Plan Amendment giving effect to the partial wind up and Enhanced Bridge.
- The PCO replied by letter dated April 29, 1998. Among other things, this letter:
- requested a completed Form of Application ("Form 1.1") for the 1997 Plan Amendment giving effect to the Enhanced Bridge;
- advised that the 1997 Plan Amendment and 1997 Report did not include plant closure benefits for the purposes of "grow in" under section 74 of the Act; and
- gave notice that the Union was requesting that certain additional employees be included in the Pension Plan and partial wind-up report (these were replacement "call in" employees who were deemed by the Company to be ineligible for Plan membership).
- By letter dated May 20, 1998, the actuaries, on behalf of Consumers, filed the Form of Application for registration in respect of the 1997 Plan Amendment — two other applications for registration in respect of two other plan amendments were also included in this correspondence.
- The 1997 Plan Amendment was never registered by the Superintendent, the other two plan amendments were registered — the Superintendent also never issued a Notice of Proposal to refuse to register the 1997 Plan Amendment.

- On April 30, 1999, the Superintendent issued a Notice of Proposal to refuse to approve the 1997 Report on the grounds that:
  a. it did not include the "call in" replacement employees; and
  b. certain "grow in" benefits required under section 74 of the Act were not provided.
- A second Notice of Proposal was also issued by the Superintendent on April 30, 1999 to order Consumers to include the "call in" employees as members of the Plan.
- Consumers requested hearings before the Tribunal in respect of each of the two Notices of Proposal.
- Each of the "grow in" and "call in" issues was resolved prior to any hearing commencing before the Tribunal. Consumers, the Superintendent and the Union reached a settlement regarding the "call in" issue in December 1999. Pursuant to the terms of the settlement, an Order was issued by the Tribunal on January 10, 2000, requiring Consumers to accept as members of the Plan, those replacement "call in" employees who met certain conditions of Plan eligibility.
- The hearing regarding the "grow in" issue was scheduled to be heard by the Tribunal on March 7, 8 and 9, 2000. On March 1, 2000, however, Consumers advised the Tribunal, the Superintendent and the Union that it was withdrawing its request for hearing.
- On May 19, 2000, Consumers filed the 2000 Report and 2000 Plan Amendment. The 2000 Plan Amendment stated that the 1997 Report and the 1997 Plan Amendment "are of no force and effect, and are hereby revoked and rescinded". The accompanying letter from the Plan actuary stated that the 1997 Report and the 1997 Plan Amendment were of "no effect" and explained that the 2000 Report and related 2000 Plan Amendment did not provide the Enhanced Bridge.
- The 2000 Plan Amendment sought to revoke or rescind the Enhanced Bridge by restricting eligibility to those members with 10 years of continuous service, 55 points calculated in age and service and who had attained the age of 60 prior to commencing payment of his or her benefit. The 1997 Plan Amendment did not require the attainment of the age of 60 for receipt of the Enhanced Bridge.
- The cover letter referred to above from the Plan actuary that filed the 2000 Report and 2000 Plan Amendment stated further as follows:

  "In the 1997 Report, the Company voluntarily proposed to provide enhanced bridge benefits in excess of the requirements of the Act to all Unionized members with 55 points, who had completed 10 years of Continuous Service. The enclosed report does not include such enhancement. The following comments are intended to assist you in understanding the Company's position regarding this issue.

  . . .

  Unfortunately, as a result of the additional costs associated with "call in" and "grow in to plant closure" provisions, and given its fiduciary responsibility to ongoing Plan members, the Company can no longer in good faith voluntarily provide this bridge enhancement. Accordingly, such enhancement is no longer proposed. It is not included in the benefits and commuted values contained in the enclosed report.

  For those already receiving bridge enhancements to which they are no longer entitled, for purposes of the enclosed report, payment

of the bridge benefit has been assumed to continue up to and including payments due in the month of September 2000. The Company is currently in the process of preparing communication to affected members in this regard."

- Following the filing of the 2000 Report and the 2000 Plan Amendment, Consumers distributed notices dated June 30, 2000, to members of the Plan affected by the partial wind up informing them in general terms of the changes that would be made to their pension benefits pursuant to the 2000 Report. Members who would have been entitled to the Enhanced Bridge under the 1997 Report were told that it would not be provided. Subsequently, however, Consumers informed those members by letter dated August 21, 2000, that notwithstanding the June 30, 2000 letter, their Enhanced Bridge would be paid, "until such time as this issue is resolved with FSCO." Members who have attained the necessary eligibility requirements under the 1997 Plan Amendment have therefore begun to receive, and are still receiving, the Enhanced Bridge.
- On April 20, 2001, the Superintendent issued the NOP on the grounds that the 2000 Report calculated the commuted values for Plan members affected by the plant closure and partial wind-up on the basis of the 2000 Plan Amendment and not the 1997 Plan Amendment.
- On May 17, 2001, the Company requested a hearing before the Tribunal regarding the NOP.

Consumers Packaging Insolvency And The Sale To O-I Canada Corp.

- On May 23, 2001, the Ontario Superior Court of Justice issued an initial Order in respect of Consumers Packaging Inc. pursuant to the Companies' Creditors Arrangement Act. The Order appointed KPMG Inc. as "monitor" of the property and to conduct the business of Consumers Packaging Inc.
- On August 31, 2001, the Ontario Superior Court of Justice approved of a sale of certain assets of Consumers Packaging Inc. to a company then known as "3058888 Nova Scotia Corporation", which company is now known as O-I Canada Corp. Pursuant to the sale, the Plan was assigned to O-I Canada Corp.
- By letter dated November 28, 2001, O-I Canada Corp. wrote to counsel to the Superintendent to confirm that O-I Canada Corp. had assumed the rights, obligations and liabilities of Consumers Packaging Inc. regarding the Plan.

Issues

The Superintendent issued the NOP on the grounds that the 1997 Plan Amendment was valid under section 13 and subsection 19 (3) (b) of the PBA, and that the 2000 Plan Amendment was void pursuant to subsection 14 (1) (c) of the PBA. It was the Superintendent's conclusion that the 2000 Plan Amendment was void because it sought to reduce the amount of the commuted value of the Enhanced Bridge, an ancillary benefit provided by the Plan for which a member or former member had met all eligibility requirements under the Plan necessary to exercise the right to receive payment of the benefit.

The essential issue is therefore, whether in the circumstances of this case, having filed and implemented the 1997 Plan Amendment, the Company has irrevocably bound itself to provide the Enhanced Bridge, or whether because the 1997 Plan Amendment was never registered by the Superintendent, the Company can effec-

tively change its mind due to subsequent cost considerations and provide the more limited bridge benefit proposed in the 2000 Plan Amendment.

The determination of this issue requires the following questions to be answered:

- When is an amendment to a pension plan effective under the Pension Benefits Act?
- Does an amendment need to be registered by the Superintendent to be effective?
- What is the legal effect and status under the PBA of each of the 1997 and 2000 Plan Amendments?

Pension Benefits Act

Counsel for the Company submitted at the hearing, and on a motion to compel answers to interrogatories brought prior to the hearing, that the provisions of the Pension Benefits Act were ambiguous. The Company sought to rely on evidence of the Superintendent's past practice to establish that amendments filed concurrently with wind-up reports could on occasion be amended or withdrawn. It was submitted that this evidence was in aid of interpreting the PBA such that it provided for plan amendments to be binding and effective only on registration, meaning that pending registration, an amendment could be withdrawn — even if implemented.

The Tribunal finds that the provisions of the Pension Benefits Act are clear, express and unambiguous and on that basis denied the motion. Whatever the Superintendent's past or current practice might be is not relevant. The statute is clear on the effect of filing an amendment and provides for it becoming effective, with express provision in the Act for subsequent registration.

The filing and implementation of the 1997 Plan Amendment, is not a case of error in drafting or a need for clarification of a plan amendment — this is a case of an ancillary benefit improvement that was promised, made, filed and implemented. The Enhanced Bridge became a part of the Plan effective May 7, 1997.

19.01 The Tribunal may issue procedural directions providing for interrogatories that are necessary to:

(a) clarify evidence filed by a party;

(b) simplify the issues;

(c) permit a full and satisfactory understanding of the matters to be considered; or

(d) expedite the proceeding.

Pension Benefits Act — Excerpts

12. Application for registration of amendment

(1) [Application for registration of amendment]

The administrator of a pension plan shall apply to the Superintendent, within sixty days after the date on which the pension plan is amended, for registration of the amendment.

(2) Requirements for registration

An application for registration shall be made by paying the fee established by the Minister and filing, (1997, c. 28, s. 192(1).)

(a) a certified copy of the amending document;

(b) certified copies of any other prescribed documents; (1997, c. 28, s. 192(2).)

(b.1) a certification in a form approved by the Superintendent and signed by the administrator of the pension plan in which the administrator attests that the amendment complies with this Act and the regulations; and (1997, c. 28, s. 192(2).)

(c) any other prescribed information.

13. When amendment effective

(1) [When amendment effective]

An amendment to a pension plan is not effective until the administrator of the plan files an application for registration of the amendment and the application meets the requirements of section 12. (1997, c. 28, s. 193.)

14. Reduction of benefits

(1) [Reduction of benefits]

An amendment to a pension plan is void if the amendment purports to reduce,

(a) the amount or the commuted value of a pension benefit accrued under the pension plan with respect to employment before the effective date of the amendment;

(b) the amount or the commuted value of a pension or a deferred pension accrued under the pension plan; or

(c) the amount or the commuted value of an ancillary benefit for which a member or former member has met all eligibility requirements under the pension plan necessary to exercise the right to receive payment of the benefit.

(2) Application of subs. (1)

Subsection (1) does not apply in respect of a multi-employer pension plan established pursuant to a collective agreement or a trust agreement.

(3) Idem

Subsection (1) does not apply in respect of a pension plan that provides defined benefits if the obligation of the employer to contribute to the pension fund is limited to a fixed amount set out in a collective agreement.

17. Issuance of notice of registration

The Superintendent shall issue a notice of registration for each amendment to a pension plan registered under this Act.

18. Refusal or revocation of registration

(1) [Refusal or revocation of registration]

The Superintendent may,

. . .

(d) refuse to register an amendment to a pension plan if the amendment is void or if the pension plan with the amendment would cease to comply with this Act and the regulations;

(e) revoke the registration of an amendment that does not comply with this Act and the regulations.

(4) Idem

A refusal of registration of an amendment to a pension plan or the revocation of an amendment to a pension plan operates to terminate the amendment as of the date specified by the Superintendent.

19. Duty of administrator

(3) Idem

The administrator of a pension plan shall ensure that the pension plan and the pension fund are administered in accordance with,

. . .

(b) the filed documents in respect of an application for registration of an amendment to the pension plan, if the application complies with this Act and the regulations and the amendment is not void under this Act.

. . .

(5) Idem, amendment

The administrator of a pension plan may administer or permit administration of the pension plan and the pension fund in accordance with an amendment pending registration or refusal of registration of the amendment.

It is clear from the PBA provisions above that the administrator of a pension plan has an obligation to administer a pension plan in accordance with filed documents and can implement or make effective plan amendments prior to the issuance of a Notice of Registration by the Superintendent. The Tribunal agrees with the Superintendent's and Union's submission that there is "no magic" in registration. Provided that the amendment is not void or contrary to the PBA, a plan amendment can be implemented and is thereby binding and enforceable pending registration. Indeed, there is no time frame in the PBA within which the Superintendent must register or refuse to register an amendment.

In this case, the Company promised and implemented the Enhanced Bridge even before filing an application to register the 1997 Plan Amendment, clearly intending it to form part of the Pension Plan.

The Company commenced payment of the Enhanced Bridge then filed the form of application for the registration of the 1997 Plan Amendment and therein certified that the amendment complied with the requirements of the Act. The Company paid the Enhanced Bridge and included it in the calculation of liabilities for the purposes of the 1997 Report, which for other reasons, was not approved. The Company cured those deficiencies but then sought to revoke the Enhanced Bridge.

The Tribunal is satisfied that the application the Company filed for the registration of the 1997 Plan Amendment met the requirements of Section 12 of the Act and that the Enhanced Bridge now forms part of the terms of the Pension Plan.

There was some evidence that the Company filed the application beyond the 60 days after the date on which the Amendment was made and did not request a filing extension. The Tribunal finds this to have been a technical breach cured in any event by the Superintendent's approval for the Company to pay benefits out of the Plan on April 15, 1997, and on the basis of the Superintendent not having issued a Notice of Proposal to refuse registration of the 1997 Plan Amendment following the filing of the board of directors' resolution in December, 1997 and the form of registration (Form 1.1) in May 1998.

The 1997 Plan Amendment is therefore a valid and binding Plan provision pursuant to Section 13(1), 19(3)(b) and 19(5) of the PBA.

With respect to the 2000 Plan Amendment, to the extent that it purports to restrict eligibility to or change the terms of the Enhanced Bridge provided by the Plan, it is void by virtue of section 14(1)(c) of the Act. The 2000 Plan Amendment would reduce the amount or commuted value of an ancillary benefit that is provided by the Plan, as amended by the 1997 Plan Amendment for those members and former members who have met the amended Plan's eligibility requirements necessary to exercise the right to receive payment of the benefit.

Doctrine of Legitimate Expectation

The Company's motion to compel answers to interrogatories relating to the Superintendent's past practice, in addition to being brought to aid in statutory interpretation, was also to argue

that the doctrine of legitimate expectation applied to the Superintendent and the disposition of this hearing.

The Tribunal denied the Company's motion, but permitted the evidence at the hearing of Mr. Kevin Aseltine, an experienced actuary and Mr. Sheldon Wayne an experienced pension consultant and lawyer. This evidence did not, however, address whether or not Consumers Packaging Inc. had any expectation or understanding regarding the 1997 Plan Amendment and whether it could be withdrawn a number of years after its filing for registration and after its implementation. The evidence was more general and anecdotal in nature. In any event, it is clear that whatever reasonable expectation the Company might have had in relation to the Superintendent's review and approval of its partial wind-up report and plan amendments, the Company's remedies are procedural and cannot affect the substantive rights of third parties.

The rights of pension plan members affected by a partial wind-up cannot be made subject to the expectations of other parties. (See: *Monsanto Canada Inc. v. Superintendent of Financial Services* (2001), 198 D.L.R. (4th) 109 (Ont. Div. Ct.) affirmed by the Court of Appeal for Ontario — November 22, 2002; *Libbey Canada Inc. v. The Crown in Right of Ontario* (Ministry of Labour) et al. (1999), 42 O.R. (3d) 417 (Ont. C.A.); *Ahani v. Canada* (Min. of Citizenship and Culture), [2002] O.J. No. 431 (C.A.).

From time to time parties argue as they did in this case that the absence of a timely precise response to submissions made to FSCO or the practice of FSCO in other cases creates expectations that somehow accrue into substantive rights or obligations independent of the impact on the rights of members of a plan. Applicants ask for extensive discovery of the Commission's files. The Act and regulations and plan terms define the rights of the parties and they cannot be amended by FSCO administrative practices. If parties are concerned about delay, equivocation or lack of clarity in responses to their submissions, they have their administrative law remedies. Those remedies do not include declarations by the Tribunal that substantive rights that affect the interests of plan members were created or that unrepresented parties had their rights compromised.

The Tribunal also rejects the assertion that the Company was denied procedural fairness or natural justice before the Superintendent. Through its actuaries and advisors, the Company anticipated the concerns the Superintendent would have with the 2000 Plan Amendment and Report, and made submissions together with the filings. The Superintendent's NOP is in any event notice of a proposed or intended decision or order and the matter of whether the NOP should be affirmed has also had a full hearing before the Tribunal.

Company's Argument for Alternative Remedy

The Company argues in the alternative that the application of the 1997 Plan Amendment should be restricted to those members who qualified for the Enhanced Bridge as at May 18, 2000, the day that the 2000 Plan Amendment was approved by the Consumers Packaging Inc. board of directors.

The rights of the members of the Plan affected by the partial wind-up were, however, crystallized as at the effective date of the wind-up: May 7, 1997. All of the affected members' pension benefits and any other benefits and entitlements are frozen as at that date. This necessarily includes the Enhanced Bridge provided by the 1997 Plan Amendment. Those benefits cannot

be impaired or reduced in any way. To do otherwise would ignore the statutory scheme of minimum pension standards, and the "special solicitude" certain provisions of the Act give to pension plan members who have lost their employment in the precise circumstances presented in this case (see *Firestone Canada Inc. v. Pension Commission of Ontario* (1990), 1 O.R. (3d) 122 (Ont. C.A.).

ORDER

Accordingly, having found the 1997 Plan Amendment establishing the Enhanced Bridge to be valid, effective and binding upon the Company (the Enhanced Bridge forming part of the Plan), the Tribunal directs the Superintendent to carry out the Notice of Proposal dated April 20, 2001.

The Tribunal remains seized with respect to the matter of costs in the event any party wishes to make a submission.

DATED at Toronto this 29th day of November, 2002.

Martha Milczynski
Chair, Financial Services Tribunal

David Wires
Member of the Tribunal

David Short
Member of the Tribunal

INDEX NO.: FST File Number P162-2001

PLAN: Retirement Plan for Salaried Employees of Marshall Steel Limited and Associated Companies, Registration Number 0968081 (the "Plan")

DATE OF DECISION: November 29, 2002

PUBLISHED: Bulletin 12/2 and FSCO web site

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28 (the "Act");

AND IN THE MATTER OF a Partial Wind-up Report submitted by Marshall-Barwick (formerly Marshall Steel Limited) to the Superintendent of Financial Services relating to the **Retirement Plan for Salaried Employees of Marshall Steel Limited and Associated Companies, Registration Number 0968081 (the "Plan");**

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the Act.

BETWEEN:

MARSHALL STEEL LIMITED AND ASSOCIATED COMPANIES

Applicant

- and -

SUPERINTENDENT OF FINANCIAL SERVICES OF ONTARIO

Respondent

- and -

JEFFREY G. MARSHALL

(A FORMER EMPLOYEE OF MARSHALL STEEL LIMITED)

Interested Party

BEFORE:

Ms. M. Elizabeth Greville
Member of the Tribunal and Chair of the Panel

Ms. Heather Gavin
Member of the Tribunal and of the Panel

Mr. C.S. (Kit) Moore
Member of the Tribunal and of the Panel

APPEARANCES:

For Marshall Steel and Associated Companies:

Mr. Sean Dunphy

For the Superintendent of Financial Services:

Ms. Deborah McPhail

For Jeffrey G. Marshall:

Mr. Michael Mazzuca

HEARING DATE:

September 9, 2002

REASONS:

Introduction

Marshall Steel Limited and Associated Companies, (hereafter the "Company") has requested a hearing before the Financial Services Tribunal (the "Tribunal") with respect to a Notice of Proposal dated December 12, 2000 (the "NOP") issued by the Superintendent of Financial Services (the "Superintendent").

The NOP relates to a report prepared on behalf of the Company dated as of August 28, 1992 in respect of a voluntary partial wind-up, (the "Report"). The Report related to the Retirement Plan for Salaried Employees of Marshall Steel Limited and Associated Companies (the "Plan"). The partial wind-up was initiated by the Company in relation to members of the Plan who were employed by the Company at its plant in Milton, Ontario.

On May 22, 1992, the controlling interest in the Company formerly owned beneficially by Jeffrey Marshall and members of his family was purchased by a member of the Canadian Erectors Limited Group in a corporate takeover.

Mr. Marshall was terminated without notice or pay in lieu of notice on May 22, 1992. The Company purported to terminate his employment "for cause." At the time of his termination, he was a member of the Plan.

Jeffrey Marshall had been employed with the Company or its predecessors from 1966. Mr. Marshall's final position with the Company was that of President and Chief Executive Officer as provided in his employment agreement with the Company dated January 1, 1991. At the time of his termination, his office was located in the Company's head office at its plant in Milton, Ontario.

The Company had begun a restructuring of its workforce, including a downsizing at its plant in Milton, in early 1992.

On August 28, 1992, the Company closed its plant in Milton. Head office functions were transferred elsewhere in this time frame.

The Report indicates that the plant shutdown was preceded and followed by a series of lay-offs and terminations of salaried employees that occurred between January 1, 1992 and September 22, 1993. A total of 34 employees were included in the partial wind-up and were therefore eligible for benefits referred to in subsection 70(6) of the Act. Mr. Marshall was not included. The wind-up group was defined in the Report as:

> "active or transferred members who terminated either voluntarily or involuntarily (except for just cause) between January 1, 1992 and September 22, 1993 in Ontario or the U.S."

The Superintendent's NOP proposed to refuse to approve the Report on the grounds that Mr. Marshall's employment was terminated during the partial wind-up period. The Company had failed to demonstrate that his termination was not as a result of the closure of the plant in Milton and therefore excluding him from the partial wind-up group was contrary to subsection 70(5) of the Act.

For the reasons set out below, the Tribunal affirms the Superintendent's NOP.

Requirements of the Act On Partial Wind-Up

Section 70(5) of the Act gives the Superintendent the authority to refuse to approve a wind-up report that fails to "protect the interests of the members and former members of the pension plan."

This section applies whether a partial wind-up is initiated voluntarily by the employer under section 68(1) of the Act, or is imposed by order of the Superintendent under section 69(1) of the Act.

In this case, the partial wind-up was initiated by the Company under section 68(1). The Report prepared on behalf of the Company set out the purpose and scope as follows:

> **"Purpose of Valuation**
>
> Marshall Steel Limited (the "Company") closed down its plant and operations in Milton, Ontario effective August 28, 1992.
>
> The Plant shutdown was preceded and was followed by a series of layoffs and terminations of the salaried employees that occurred between January 1, 1992 and September 22, 1993. In addition, Head Office functions were transferred to the Laval operation and to the Company's new parent, Canerector Inc. over the same period of time. By September 22, 1993, no Ontario employees remained in the Plan. In addition one Ontario member had transferred to a U.S. plant. That U.S. operation was sold in early 1993.
>
> As a result of these events, a partial wind-up of the Retirement Plan for Salaried Employees of Marshall Steel Limited and Associated Companies (the "Plan") is required."

As noted above, the partial wind-up group was defined in the Report as all active or transferred members who terminated voluntarily or involuntarily between January 1, 1992 and September 22, 1993 except for those terminated "for just cause." The Report did not name Mr. Marshall, but in correspondence between the Company and the Pension Officer at the Pension Commission of Ontario ("PCO") as it then was, the PCO was advised of Mr. Marshall's exclusion because the Board of Directors had passed a motion that Mr. Marshall be terminated for "cause."

Without notice to Mr. Marshall, the then Superintendent, by letter to the Company dated December 1, 1995, authorized the distribution of assets in the Plan as provided in the Report. The letter, however, did not deal with the issue of surplus assets:

> "... the proposals with respect to the distribution of surplus assets attributable to members, former members and other persons affected by the partial wind-up will be dealt with separately.
>
> When the proposals for the distribution of the surplus assets are found to be acceptable, I shall proceed with my approval of the wind-up report."

Exclusion of Mr. Marshall from the Partial Wind-Up Group

The Company made submissions to the Tribunal that Mr. Marshall was properly excluded from the partial wind-up group because his termination was not a result of the closure of the plant.

In support of these submissions, the Company argued that the termination of Mr. Marshall was a direct result of a change of control of the Company, not of the plant closure or consequential transfer of the Company's head office, that in any event, both the closure and transfer occurred after his dismissal, and/or that Mr. Marshall was terminated for just cause.

The Company further argued that since the partial wind-up was initiated under Section 68(1) of the Act, the Company was free in the first instance to establish the criteria for members and former members to be included in the eligible group.

In the NOP it is stated that the Company failed to demonstrate that Mr. Marshall's termination was not "a result of" the plant closure.

The Company contended that because the partial wind-up application was governed by Section 68(1) of the Act, the Tribunal was not required to consider the operation of Section 69(1) of the Act, and in particular clause 69(1)(d) which states that the Superintendent may require a wind-up if:

> "(d) a significant number of members of the pension plan cease to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer;"

However, the Company submitted that because the Superintendent's stated reason in the NOP for proposing to reject the Report mirrored the "as a result of" language in clause 69(1)(d), case law applicable to that clause could be considered. In this regard, the Company cited Imperial Oil Ltd. vs. Ontario (Superintendent of Financial Pensions (1996) 15 C.C.P.B. 31 (PCO), p. 44-45 affirmed (1997), 16 C.C.P.B. 93 (Ont. Div., CT.)) in support of the contention that under clause 69(1)(d) of the Act, the partial wind-up group should include members who are affected by the partial wind-up or who have ceased to be employed "as a direct result of" discontinuance of or reorganization of the business.

In that case, the issue was whether a former officer should have been included in the partial wind-up group even though his employment was terminated outside the wind-up period.

However, the circumstances of this case are that Mr. Marshall was terminated within the partial wind-up period defined by the Company in the Report. The PCO, in the case of Imperial Oil Retirement Plan (1988) dealt with the issue of a business reorganization within the meaning of clause 69(1)(d) of the Act. With respect to the composition of the partial wind-up group, the PCO held:

> "The reason that prompts the reorganization may be cost cutting, bench marking or cyclical employment patterns due to price fluctuations but whatever the underlying cause, it is the fact of the reorganization that is of legal significance.
>
> Did the workforce reduction result from these activities? Again, we answer "yes". Are we inclined to force the Superintendent to consider each termination over the 3 year period (of the reorganization) to ensure that the driving force was the reorganization? No. The amount of resources to do that would be enormous and it is not clear that accurate information could even be obtained. For example, if a lower performing employee is let go when the restructuring takes place, is the termination deemed to be a result of performance or the restructuring? If the employer and employee differed in their views as to what was the dominant reasons, how would the dispute be resolved? This simple example illustrates the futility of such an approach. ... The information given by Imperial Oil itself shows that the terminations took place contemporaneous with the reorganization and were related to the activities we have found amount to a reorganization. There is no need to go behind that information."
>
> *Imperial Oil Limited Retirement Plan (1988), May 27, 1996, DEC-34 (PCO), at pp 7-8.*

This decision, which was affirmed on appeal to the Divisional Court and the Court of Appeal, supports the proposition that if the termination of employment occurred during the partial wind-up period, it is deemed to be as a result of the events giving rise to the partial wind-up.

The Company's second basis for excluding Mr. Marshall is that he was terminated for just cause. In 1992, Mr. Marshall commenced a wrongful dismissal action against the Company. In 1998, a Full and Final Mutual Release ("Release") was concluded between Mr. Marshall and the Company in relation to that proceeding. In the action, Mr. Marshall did not in his statement of claim raise any issues in relation to the Plan or to his entitlements or potential entitlements under the Act. Consequently, the Release is not related to the subject matter of these proceedings. Moreover, Mr. Marshall clearly meets the definition of "member" and "former member" of the Plan during the periods relevant to this case. Whether or not he was terminated for cause, he is entitled to the protection and rights extended by the Act to all pension plan members and former members, including the right to have his interests protected by the Superintendent pursuant to subsection 70(5).

Further, as the PCO noted, even if a member's performance is an issue, the pension adjudicator cannot embark upon on inquiry as to the "dominant reason" for the termination.

On the face of the Report, the Company clearly made a decision to define the partial wind-up group in a manner that included individuals who were terminated prior to the actual plant closure by establishing the relevant period as between January 1, 1992 and September 22, 1993. Mr. Marshall's employment was clearly terminated within this period, contemporaneously with the restructuring of the workforce and transfer of head office functions.

Onus of Proof

The Company also made submissions that because the partial wind-up was Company-initiated under Section 68(1), the onus of proof with respect to whether Mr. Marshall should be included in the partial wind-up group rests with the Superintendent and/or Mr. Marshall.

However, Section 70 of the Act places the responsibility on the administrator of a pension plan to file a wind-up report and to satisfy the Superintendent that the requirements specified in that section, including subsection 70(5), have been met before the Superintendent's approval will be granted. In the partial wind-up application that is the subject of the case, then, the onus rests with the Company to establish that the Report meets the requirements of the Act, including whether Mr. Marshall is properly excluded from the wind-up group. Section 70 applies to partial wind-ups governed by both Section 68(1) and Section 69(1).

Application of the Doctrine of *Functus Officio*

The Company has made submissions that the Superintendent lacked jurisdiction to issue the NOP on the basis that the Superintendent was *functus officio*.

In support of their position, they submitted that the letter of December 1, 1995 from the then Superintendent which authorized the distribution of non-surplus assets of the Plan pursuant to the terms of the Report, is tantamount to approval of the Report, except in relation to surplus.

It is well established practice in partial wind-up applications that the Superintendent:

- conditionally approves the distribution of basic benefit entitlements, and
- delays final approval of the report until the issue of any surplus assets associated with the particular partial wind-up has been resolved.

Final approval is not granted until all relevant assets (including surplus) and liabilities have been properly dealt with.

The Superintendent's letter of December 1, 1995 is consistent with this process. As already noted above, the then Superintendent wrote that when the proposals for the distribution of the surplus assets were found to be acceptable, he would proceed with approval of the wind-up report.

This statement clearly illustrates that a final decision had not been made by the Superintendent concerning the approval of the Report. Consequently, the doctrine of *functus officio* does not apply in the circumstances of this case.

ORDER

Accordingly, the Tribunal affirms the Superintendent's NOP and directs the Company as administrator to file a revised partial wind-up report that includes Mr. Marshall in the partial wind-up group.

The Tribunal will remain seized for the purposes of considering the parties' request for costs, such request and submissions to be made in writing within 30 days of this order.

DATED at Toronto, Ontario, this 29th day of November, 2002.

Ms. M. Elizabeth Greville
Member of the Tribunal and Chair of the Panel

Mr. C.S. (Kit) Moore
Member of the Tribunal and of the Panel

Ms. Heather Gavin
Member of the Tribunal and of the Panel

INDEX NO.: FST File Number U0206-2002

DATE OF DECISION: December 17, 2002

PUBLISHED: Bulletin 12/2 and FSCO web site

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the Pension Benefits Act, R.S.O. 1990, c.P.8, as amended (the "Act");

AND IN THE MATTER OF a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated October 21, 2002, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

AND IN THE MATTER OF a Hearing under subsection 89(8) of the Act;

REASONS:

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated October 21, 2002 that denied the Applicant access to funds associated with a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:

   67.B(5) Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that this application (the "September Application"), which was made on the basis of low income, was made within 12 months after the date of another successful application (the "May Application") made on the basis of low income, contrary to the conditions imposed by subsections 89(4) and 89(5) of Ontario Regulation 909 as amended (the "Regulation"), as follows:

   89.B(4) Only one application may be made during each 12-month period.

   (5) An unsuccessful application is not counted for the purposes of subsection (4).

3. The issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the September Application.

4. The Superintendent submits that the May Application was signed by the Applicant on May 24, 2002. On June 5, 2002, the Superintendent consented to withdrawal of the amount requested, on the basis of the Applicant's low income. Therefore, the May Application was a successful application.

5. On September 17, 2002, the Applicant signed the September Application, in which he applied to withdraw $16,000 from his locked-in account on the basis of low income. As this application was made within 12 months after the successful May

Application, which was also on the basis of low income, the September Application does not meet the conditions set out in subsections 89(4) and 89(5) of the Regulation.

6. The evidence of financial hardship on the part of the Applicant is compelling in this situation, but this Tribunal does not have authority to direct the Superintendent to allow an application for a withdrawal from a locked-in account that does not meet the requirements of the Regulation. In this case, the September Application cannot be granted because it clearly fails to meet one of those requirements.
7. If in May 2003, 12 months after the date of the successful May Application, the circumstances of the Applicant are such that he could meet the qualifications for reliance on low income, a further application for withdrawal of locked-in funds can then be made to the Superintendent. Prior to that time, the Superintendent would have authority to consider the merits of a financial hardship application submitted on one of the prescribed grounds of financial hardship other than low income.
8. In the circumstances, the Tribunal must affirm the Superintendent's Notice dated October 21, 2002 in respect of the September Application.

ORDER

The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated September 21, 2002, directed to the Applicant.

DATED at Toronto, this 17th day of December, 2002.

Mr. Kit Moore
Member, Financial Services Tribunal

INDEX NO.: FST File Number U0205-2002

DATE OF DECISION: December 20, 2002

PUBLISHED: Bulletin 12/2 and FSCO web site

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended (the "Act");

AND IN THE MATTER OF a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated October 7, 2002, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

AND IN THE MATTER OF a Hearing under subsection 89(8) of the Act;

REASONS:

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated October 7, 2002, denying the Applicant access to funds associated with a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:

   67.–(5) Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that this application (the "Current Application"), which was made on the basis of low income, was made within 12 months after the date of a previous successful application (the "Previous Application") made on the basis of low income, contrary to the conditions imposed by subsections 89(4) and 89(5) of Ontario Regulation 909 as amended (the "Regulation"), as follows:

   89.–(4) Only one application may be made during each 12-month period.

   (5) An unsuccessful application is not counted for the purposes of subsection (4).

3. The issue to be determined by the Tribunal, based on written submissions from the Applicant and Superintendent, is whether or not the Superintendent should have consented to the Current Application.

4. The Superintendent submits that the Previous Application was signed by the Applicant on August 2, 2002, resulting in the Superintendent's consent to withdrawal of funds from the Applicant's locked-in account, on the basis of the Applicant's low income. Therefore, the Previous Application was successful.

5. On August 27, 2002, the Applicant signed the Current Application, requesting consent to withdraw funds from her locked-in account on the basis of low income. As this

application was made within 12 months after the successful Previous Application, which was also made on the basis of low income, the Current Application does not meet the conditions set out in subsections 89(4) and 89(5) of the Regulation.

6. In her submissions to the Tribunal, the Applicant presented compelling evidence of her financial hardship, and has clearly explained the misunderstandings that led to insufficient funds being requested in the Previous Application. However, we must agree with the position stated by the Superintendent regarding these issues. No matter how serious the Applicant's financial hardships and misunderstandings may be, this Tribunal has no authority to direct the Superintendent to allow an application that does not meet the requirements of the Regulation. The Current Application cannot be granted because it fails to meet one of those requirements, in that a previous application was made within the preceding 12 months, on the same basis of low income circumstances. The Tribunal cannot waive this Regulation in this situation, nor can the Tribunal direct the Superintendent to act contrary to this Regulation.
7. The Applicant could, of course, make a further application, without waiting for the expiry of the 12-month period from the date of the Previous Application, **if such an application could be put on the basis of one of the other criteria of financial hardship (i.e. other than low income), as prescribed by the Regulation**. For example, the Applicant may wish to make a further application if she has received a written demand for payment of rent owed, and needs funds to avoid the risk of eviction from her rented residence. Then, even if the 12-month period has not expired, the Superintendent may have authority to consider such an application on its merits.
8. In the circumstances, because the Current Application was made within 12 months after the Previous Application made on the basis of low income, and because the Current Application was also based on low income circumstances, the Tribunal must affirm the Superintendent's Notice dated October 7, 2002 in respect of the Current Application.

ORDER

The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated October 7, 2002, directed to the Applicant.

DATED at Toronto, this 20th day of December, 2002.

Mr. Kit Moore
Member, Financial Services Tribunal

INDEX NO.: FST File Number U0209-2002

DATE OF DECISION: December 20, 2002

PUBLISHED: Bulletin 12/2 and FSCO web site

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended (the "Act");

AND IN THE MATTER OF a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated October 21, 2002, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

AND IN THE MATTER OF a Hearing under subsection 89(8) of the Act;

REASONS:

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated October 21, 2002, denying the Applicant access to funds associated with a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:

   67.–(5) Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that this application (the "Current Application"), which was made on the basis of low income, was made within 12 months after the date of a previous successful application (the "Previous Application") made on the basis of low income, contrary to the conditions imposed by subsections 89(4) and 89(5) of Ontario Regulation 909 as amended (the "Regulation"), as follows:

   89.–(4) Only one application may be made during each 12-month period.

   (5) An unsuccessful application is not counted for the purposes of subsection (4).

3. As confirmed in a pre-hearing telephone conference with the Applicant and counsel for the Superintendent on December 17, 2002, the issue to be determined by the Tribunal, based on written submissions from the Applicant and Superintendent, is whether or not the Superintendent should have consented to the Current Application.

4. The Superintendent submits that the Previous Application was signed by the Applicant on July 3, 2002. On July 30, 2002, the Superintendent consented to withdrawal of funds from the Applicant's locked-in account, on the basis of the Applicant's low income. Therefore, the Previous Application was successful.

5. On August 29, 2002, the Applicant signed another application, which was amended by the Applicant's signature dated September 23, 2002, resulting in the Current Application to withdraw funds from his locked-in account on the basis of low income. As this application was made within 12 months after the successful Previous Application, which was also made on the basis of low income, the Current Application does not meet the conditions set out in subsections 89(4) and 89(5) of the Regulation.
6. In his submissions to the Tribunal, the Applicant presented compelling evidence of his financial hardship resulting from accumulated credit card debts. However, no matter how serious these financial hardships may be, this Tribunal does not have authority to direct the Superintendent to allow an application that does not meet the requirements of the Regulation. The Current Application cannot be granted because it fails to meet one of those requirements, in that a previous application was made within the preceding 12 months, on the same basis of low income circumstances. The Tribunal cannot waive this Regulation in this situation, nor can the Tribunal direct the Superintendent to act contrary to this Regulation.
7. The Applicant could, of course, make a further application, without waiting for the expiry of the 12-month period from the date of the Previous Application, **if such an application could be put on the basis of one of the other criteria of financial hardship (i.e. other than low income), as prescribed by the Regulation**. For example, the Applicant may wish to make a further application if he has received a written demand for payment of rent owed, and needs funds to avoid the risk of eviction from his rented residence. Then, even if the 12-month period has not expired, the Superintendent may have authority to consider such an application on its merits.
8. In the circumstances, because the Current Application was made within 12 months after the Previous Application made on the basis of low income, and because the Current Application was also based on low income circumstances, the Tribunal must affirm the Superintendent's Notice dated October 21, 2002 in respect of the Current Application.

ORDER

The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated October 21, 2002, directed to the Applicant.

DATED at Toronto, this 20th day of December, 2002.

Mr. Kit Moore
Member, Financial Services Tribunal

INDEX NO.: FST File Number U0200-2002

DATE OF DECISION: December 23, 2002

PUBLISHED: Bulletin 12/2 and FSCO web site

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF A Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated September 23, 2002, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

AND IN THE MATTER OF a Hearing under subsection 89(8) of the Act;

REASONS:

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated September 23, 2002 that denied the Applicant access to funds held in a locked-in account (in this case, the Applicant's life income fund). The Applicant had applied to withdraw these funds pursuant to subsection 67(5) of the Act, which reads as follows:

   67. – (5) Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that the requirements of subsection 88(2) of Regulation 909, as amended, to the Act (the "Regulation") do not permit a withdrawal of any amount in this case.

3. An application for withdrawal based on financial hardship is subject to the conditions and requirements prescribed in sections 83 through 89 of the Regulation.

4. In this case, the application to the Superintendent under subsection 67(5) of the Act was based on the circumstances prescribed in paragraph 87(1)7 of the Regulation. The relevant sections for purposes of an application based on paragraph 87(1)7 of the Regulation are:

   88(2) Subject to section 89...the owner is entitled to withdraw an amount calculated using the formula, A-(B-C) = D, in which

   "A" is the amount the owner applies to withdraw;

   "B" is the market value of all assets of the owner...

   "C" is the total of the liabilities of the owner...

   "(B-C)" cannot be less than 0;

   "D" is the amount the owner is entitled to withdraw, net of any withholding tax and fee.

89(6) The amount the owner may apply to withdraw under section 88 is the amount by which "E" exceeds "F" where,

"E" is 50 per cent of the Year's Maximum Pensionable Earnings (YMPE) for the year in which the application is signed; and

"F" is 75 per cent of the owner's expected total income from all sources before taxes for the 12-month period following the date of signing the application.

5. Based on the information provided by the Applicant in his application dated June 22, 2002, the amount that the Applicant is entitled to withdraw under section 88 of the Act is $6,050.00 (calculated in accordance with subsection 89(6) of the Act). This amount is "A" in the formula described in subsection 88(2) of the Act.
6. In this case, the formula in subsection 88(2) of the Regulation result in no amount being eligible for withdrawal, as the calculation would be: $6,050.00 - ($15,000 - $500) = 0. (The calculation cannot result in a negative amount.)
7. As a result, the application does not meet the requirements of subsection 67(5) of the Act. The Tribunal does not have the authority to direct the Superintendent to allow an application that does not meet the requirements of the Regulation. Although the evidence of financial hardship on the part of the Applicant may be compelling, the application in this case cannot be granted because it does not meet those requirements and therefore the Superintendent's refusal is affirmed.

ORDER

The Superintendent's Notice of Proposal to Refuse to Consent, dated September 23, 2002, is affirmed and this application is dismissed.

DATED at Toronto this 23rd day of December, 2002.

Mr. Paul W. LitnerMember,
Financial Services Tribunal

INDEX NO.: FST File Number U0211-2003

DATE OF DECISION: February 19, 2003

PUBLISHED: Bulletin 12/2 and FSCO web site

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended (the "Act");

AND IN THE MATTER OF a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent") on January 6, 2003 with respect to an application for withdrawal of money from a life income fund, locked-in retirement income fund (a "locked-in account") based upon financial hardship;

AND IN THE MATTER OF a Request for Hearing under subsection 89(8) of the Act;

REASONS:

1. The Applicant applied to withdraw $100,000 from his locked-in account.
2. On January 6, 2003, the Superintendent consented to withdrawal of funds totaling $4,832.40 from his locked-in account, based upon an application dated September 16, 2002, as submitted by the Applicant.
3. The Applicant in this matter requested a hearing in respect to the Superintendent's Notice of Proposal to Refuse to Consent dated January 6, 2003 for $95,467.60.
4. Subsection 87(5) of Regulation 909 (the "Regulation") sets out the amount an Applicant may apply to withdraw under paragraph 2 of subsection 87 (1) of the Regulation.

The owner of the locked-in account may apply for one or both of the following:

(a) consent to withdraw an amount sufficient to pay arrears and bring the debt into good standing;

(b) consent to withdraw:

(i.) a lump sum covering twelve monthly debt payments, or

(ii.) twelve monthly installments, each to cover one monthly debt payment.

5. The Applicant submitted detailed information of current assets held in his locked-in account.
6. The Applicant requested an amount to pay off an amount greater than the entire mortgage, which included legal expenses and other expenses.
7. The Applicant submitted information pertaining to a demand for mortgage arrears from the mortgage holder (which is the Applicant's sister) in the amount of three months. Monthly arrears total $322.16.
8. As stated in Point 4 of this decision, the Act states that the Applicant may apply for the actual arrears and/or twelve monthly debt payments. The debt of three-month arrears and twelve monthly debt payments total $4832.40.
9. As a result, the application does not meet the requirements of subsection 87 (5) of the Regulation. The Tribunal does not have the authority to direct the Superintendent to allow an application that does not meet the

strict requirements of the Regulation. As such, the Superintendent's refusal is affirmed.

ORDER

The Superintendent's Notice of Proposal to Refuse to Consent, dated January 6, 2003 is affirmed and this application is dismissed.

DATED at Toronto this 19th day of February, 2003.

Kevin G. Ashe
Member, Financial Services Tribunal

INDEX NO.: FST File Number U0215-2003

DATE OF DECISION: March 5, 2003

PUBLISHED: Bulletin 12/2 and FSCO web site

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated January 20, 2003, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

AND IN THE MATTER OF a Hearing under subsection 89(8) of the Act;

REASONS:

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated January 20, 2003, that denied the Applicant access to funds associated with a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:

   67.-(5) Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that this application (the "December 12, 2002 Application"), which was made on the basis of low income, was made within12 months after the date of another successful application (the "August 2002 Application") made on the basis of low income, contrary to the conditions imposed by subsections 89(4) and 89(5) of Ontario Regulation 909 as amended (the "Regulation"), as follows:

   89.-(4) Only one application may be made during each 12-month period.

   (5) An unsuccessful application is not counted for the purposes of subsection (4).

3. The issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the December 12, 2002 Application.

4. The August 2002 Application was signed by the Applicant on August 8, 2002. On August 23, 2002, the Superintendent consented to withdrawal of funds from the Applicant's locked-in account, on the basis of the Applicant's low income. Therefore the August 2002 Application was a successful application.

5. On December 12, 2002, the Applicant signed the December 12, 2002 Application, in which he applied to withdraw additional funds from his locked-in account on the basis of low income. As this application was

made within 12 months after the successful August 2002 Application, which was also based on low income, the December 12, 2002 Application does not meet the conditions set out in subsections 89(4) and 89(5) of the Regulation.

6. This Tribunal does not have the authority to direct the Superintendent to allow an application for a withdrawal from a locked-in account that does not meet the requirements of the Regulation. Although the evidence of financial hardship on the part of the Applicant may be compelling, the December 12, 2002 Application cannot be granted because it fails to meet one of those requirements. If in August 2003, 12 months after the date of the successful August 2002 Application, if the circumstances of the Applicant are such that he wishes to do so, a further application for withdrawal of locked-in funds may be submitted for consideration by the Superintendent.
7. In the circumstances, the Tribunal must affirm the Superintendent's Notice dated January 20, 2003, in respect of the December 12, 2002 Application.

ORDER

The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated January 20, 2003, directed to the Applicant.

DATED at Toronto, this 5th day of March, 2003.

Mr. J. P. Martin
Member, Financial Services Tribunal

INDEX NO.: FST File Number U0212-2003

DATE OF DECISION: March 10, 2003

PUBLISHED: Bulletin 12/2 and FSCO web site

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "Act");

AND IN THE MATTER OF a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent") on January 6, 2003 with respect to an application for withdrawal of money from a life income fund, locked-in retirement account (a "locked-in account") based upon financial hardship;

AND IN THE MATTER OF a Request for Hearing under subsection 89(8) of the Act;

REASONS:

1. The Applicant applied to withdraw $17,225 from his locked-in account based upon low income in an application dated November 13, 2002 and amended on November 24, 2002.
2. On January 6, 2003, the Superintendent issued a Notice of Proposal to Refuse to Consent to the application. The Superintendent stated that he does not have the authority under law to consent to the application as the Applicant's and spouse's net assets exceed the amount he may apply to withdraw.
3. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated January 6th, 2003.
4. Section 67(1) of the Pension Benefits Act, R.S.O. 190, c. P.8, generally prohibits the commutation or surrender of a pension, deferred pension, pension benefit, annuity or prescribed retirement savings arrangement. Section 67(5) of the Act provides an exception to the rule in circumstances of financial hardship.
5. Subsection 87(1) of Regulation 909, R.R.O. 1990, as amended (the "Regulation") prescribes the circumstances of financial hardship in which the Superintendent may consent to such applications. As noted in Point 1, the application was based on low income. Paragraph 7 of subsection 87(1) of the Regulation states that:

   The owner's expected total income from all sources before taxes for the 12-month period following the date of signing the application is 66 2/3 per cent or less of the Year's Maximum Pensionable Earnings for the year in which the application is signed.
6. Section 88(2) of the Regulation sets out the formula for determining the amount the owner (the Applicant in this case) may apply to withdraw, as follows: A - (B-C) = D.

   "A" is the amount the owner may apply to withdraw.

   "B" is the market value of all assets of the applicant and the spouse...

"C" is the total of all liabilities of the applicant and spouse....

"(B-C)" is the net assets of the applicant and spouse.

"D" is the amount an applicant is ultimately entitled to withdraw.

7. Based on the information provided by the Applicant in his application of November 13, 2002 and amended on November 24, 2002, the amount the Applicant is entitled to withdraw is "D" as referenced above. The amount the applicant may apply to withdraw is "A", $13,250. The Applicant and spouse's net assets, "B-C", are $14,030. The amount the Applicant is entitled to withdraw for the purposes of subsection 88(2) of the Regulation, "D" is $0. (the calculation cannot result in a negative amount).
8. The Applicant submits that the RRSP of his spouse should not be included in the calculation. Subsection 88(2) set out several types of assets to be excluded from the calculations of net assets, but the applicant or spouse's RRSP is not one mentioned for exclusion in the Regulation.
9. As a result, the application does not meet the requirements of subsection 67(5) of the Act. The Tribunal does not have the authority to direct the Superintendent to allow an application that does not meet the strict requirements of the Regulation. As such, the Superintendent's refusal is affirmed.

ORDER

The Superintendent's Notice of Proposal to Refuse to Consent, dated January 6, 2003, is affirmed and this application is dismissed.

DATED at Toronto this 10th day of March, 2003.

Kevin G. Ashe
Member, Financial Services Tribunal

INDEX NO.: FST File Number U0216-2003

DATE OF DECISION: March 18, 2003

PUBLISHED: Bulletin 12/2 and FSCO web site

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended (the "Act");

AND IN THE MATTER OF a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated January 20, 2003, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

AND IN THE MATTER OF a Hearing under subsection 89(8) of the Act;

REASONS:

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated January 20, 2003, denying the Applicant access to funds associated with a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:

   67.-(5) Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that this application (the "Current Application"), which was dated December 12, 2002 and was made on the basis of low income, was made within 12 months after the date of a previous successful application (the "Previous Application"), which was dated August 8, 2002 and was also made on the basis of low income, contrary to the conditions imposed by subsections 89(4) and 89(5) of Ontario Regulation 909 as amended (the "Regulation"), as follows:

   89.-(4) Only one application may be made during each 12-month period.

   (5) An unsuccessful application is not counted for the purposes of subsection (4).

3. The issue to be determined by the Tribunal, based on written submissions from the Applicant and Superintendent, is whether or not the Superintendent should have consented to the Current Application.

4. The Applicant states that his most recent successful application based on low income was the Previous Application signed by the Applicant on August 8, 2002.

5. On December 12, 2002, the Applicant signed the Current Application, requesting consent to withdraw funds from his locked-in account on the basis of low income. As this application was made within 12 months after the successful Previous

Application, which was also made on the basis of low income, the Current Application does not meet the conditions set out in subsections 89(4) and 89(5) of the Regulation.

6. In his submissions to the Tribunal, the Applicant presented additional evidence of his financial hardship, including copies of an unpaid utilities bill and a demand from his landlord for unpaid rent. However, no matter how serious the Applicant's financial hardships are, this Tribunal has no authority to direct the Superintendent to allow an application that does not meet the requirements of the Regulation. The Current Application cannot be granted because it fails to meet one of those requirements, in that a previous application was made within the preceding 12 months, on the same basis of low income circumstances. The Tribunal cannot waive this Regulation in this situation, nor can the Tribunal direct the Superintendent to act contrary to this Regulation.
7. Regarding the possibility of the Applicant making another application now, on the basis of the demand from his landlord for rental arrears, the Superintendent submits that the Applicant cannot apply on this basis until July 2003, 12 months after the date of another previous successful application made in 2002 on this basis.
8. The Tribunal affirms the Superintendent's Notice to Propose to Refuse to Consent dated January 20, 2003, regarding the Current Application.

ORDER

The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated January 20, 2003, directed to the Applicant.

DATED at Toronto, this 18th day of March, 2003.

Mr. Kit Moore
Member, Financial Services Tribunal

INDEX NO.: FST File Number U0213-2003

DATE OF DECISION: March 24, 2003

PUBLISHED: Bulletin 12/2 and FSCO web site

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended (the "Act");

AND IN THE MATTER OF a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated January 21, 2003, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

AND IN THE MATTER OF a Hearing under subsection 89(8) of the Act;

REASONS:

1. The applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated January 21, 2003, denying the Applicant access to funds associated with a locked-in account. The applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:

   67.(5) Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that the application (the "Current Application") made on the basis of low income, is contrary to the conditions imposed by subsections 89(4) and 89(5) of Ontario Regulation 909 as amended (the "Regulation"), as follows:

   89.(4) Only one application may be made during each 12 month period.

   (5) An unsuccessful application is not counted for the purposes of subsection (4).

3. The issue to be determined by the Tribunal, based on written submissions from the Applicant and the Superintendent, is whether or not the Superintendent should have consented to the Current Application (dated December 5, 2002).

4. The Superintendent submits that the Applicant signed a Previous Application on May 29, 2002 resulting in the Superintendent's consent to the withdrawal of funds from the Applicant's locked-in account, on the basis of the Applicant's low income. Therefore, the Previous Application was successful.

5. On December 5, 2002, the Applicant signed the Current Application, requesting consent to withdraw funds from his locked-in account on the basis of low income. As this application was made within 12 months after the successful Previous Application,

(which was also made on the basis of low income), the Current Application does not meet the conditions set out in subsections 89(4) and 89(5) of the Regulation.

6. This Tribunal does not have the authority to direct the Superintendent to allow an application for a withdrawal from a locked-in account that does not meet the requirements of the Regulation. Although the evidence of financial hardship on the part of the Applicant may be compelling, the December 2002 application cannot be granted because it fails to meet the time requirement in the regulations.
7. In the circumstances the Tribunal must affirm the Superintendent's Notice dated January 21, 2003.

ORDER

The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated January 21, 2003, directed to the Applicant.

DATED at Toronto, this 24th day of March, 2003.

Ms. Heather Gavin
Member, Financial Services Tribunal

INDEX NO.: FST File Number U0214-2003

DATE OF DECISION: March 24, 2003

PUBLISHED: Bulletin 12/2 and FSCO website

(Note: Only FST decisions pertaining to pensions are included in this section.)

(Note: In this section, "Commission" refers to the Financial Services Commission of Ontario.)

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended (the "Act");

AND IN THE MATTER OF a Notice of Proposal to Refuse to Consent by the Superintendent of Financial Services (the "Superintendent"), dated December 20, 2002, with respect to an application for withdrawal of money from a life income fund, locked-in retirement account, or a locked-in retirement income fund (a "locked-in account") based on financial hardship;

AND IN THE MATTER OF a Hearing under subsection 89(8) of the Act;

REASONS:

1. The Applicant in this matter requested a hearing in respect of the Superintendent's Notice of Proposal to Refuse to Consent dated December 20, 2002, that denied the Applicant access to funds associated with a locked-in account. The Applicant had applied to withdraw these funds, pursuant to subsection 67(5) of the Act, which reads as follows:

   67.-(5) Despite subsections 1 and 2, upon application, the Superintendent may consent to the commutation or surrender, in whole or in part, of a prescribed retirement savings arrangement of a type that is prescribed for the purposes of this subsection if the Superintendent is satisfied as to the existence of such circumstances of financial hardship as may be prescribed.

2. The Superintendent's ground for denial was that this application (the "Current Application dated November 27, 2002), which was made on the basis of low income, was made within 12 months after the date of another successful application (the Previous Application dated June 2002) made on the basis of low income, contrary to the conditions imposed by subsections 89(4) and 89(5) of Ontario Regulation 909 as amended (the "Regulation"), as follows:

   89.-(4) Only one application may be made during each 12-month period.

   (5) An unsuccessful application is not counted for the purposes of subsection (4).

3. The issue to be determined by the Tribunal is whether or not the Superintendent should have consented to the November 27, 2002 Application.

4. The June 2002 Application was signed by the Applicant on June 27, 2002. On July 18, 2002, the Superintendent consented to withdrawal of funds from the Applicant's locked-in account, on the basis of the Applicant's low income. Therefore the June 2002 Application was a successful application.

5. On November 27, 2002, the Applicant signed the November 27, 2002 Application, in which he applied to withdraw additional funds from his locked-in account on the basis that he believed that he had overesti-

mated his projected income in the June 2002 Application and therefore received less than he was entitled to receive. There is nothing in the Regulation which allows an Applicant to make a second application on the same ground of financial hardship or retroactively amend a successful application after a consent has been issued on the grounds that insufficient funds were originally requested. As this application was made within 12 months after the successful June 2002 Application, which was based on low income, the November 27, 2002 Application does not meet the conditions set out in subsections 89(4) and 89(5) of the Regulation.

6. The Tribunal must agree with the position stated by the Superintendent regarding these issues. No matter how serious the Applicant's financial hardships and misunderstandings may be, this Tribunal has no authority to direct the Superintendent to allow an application that does not meet the requirements of the Regulation. The November 27, 2002 Application cannot be granted because it fails to meet one of those requirements, in that a previous successful application (June 2002) was made within the preceding 12 months, on the same basis of low income circumstances. The Tribunal cannot waive this Regulation in this situation, nor can the Tribunal direct the Superintendent to act contrary to this Regulation.
7. In the circumstances, the Tribunal must affirm the Superintendent's Notice of Proposal to Refuse to Consent, dated December 20, 2003, in respect of the November 27, 2002 Application.

ORDER

The Superintendent is hereby directed to carry out the proposal contained in the Notice of Proposal to Refuse to Consent, dated December 20, 2002, directed to the Applicant.

DATED at Toronto, this 24th day of March, 2003.

Mr. J. P. Martin
Member, Financial Services Tribunal

Ontario

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